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TREATIES

Thursday, September 29, 2005

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m. in Room SD–419, Dirksen Senate Office Building, Hon. Richard G. Lugar [chairman] presiding.

Present: Senators Lugar [presiding].

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

The CHAIRMAN. This meeting of the Senate Foreign Relations Committee is called to order. The committee meets today to hear testimony on five treaties. Within the Congress, the Senate Foreign Relations Committee is charged with the unique responsibility of reviewing treaties negotiated by the administration. Our colleagues in the Senate depend on us to make timely and judicious recommendations on treaties.

We are pleased that the Bush administration has negotiated these agreements. We look forward to hearing from these officials about why they believe the Senate should approve them.

In advance of this hearing, committee staff members have reviewed these treaties carefully. We have held two formal committee briefings covering treaties, with administration representatives available to answer questions. I appreciate the support and cooperation of the distinguished ranking member, Senator Biden, throughout that process.

On our first panel, we welcome Mr. David Balton, Deputy Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. He will testify on four treaties related to international fisheries and the ocean environment.

The first of these treaties relates to marine pollution. The 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978, commonly referred to as "MARPOL," is the global framework agreement to control discharges of pollution from ships. Today we will be considering the 1997 protocol amending MARPOL and adding Annex VI, which contains regulations for preventing air pollution.

Among other measures, MARPOL Annex VI limits the discharge of nitrogen oxides from larger marine diesel engines, governs the sulphur content of marine diesel fuel, prohibits the emission of ozone-depleting substances, and set standards for shipboard incin-

erators and fuel oil quality, and establishes requirements for platforms and drilling rigs at sea.

Mr. Balton will also address three treaties related to fish stocks in the Pacific Ocean. The United States-Canada Agreement on Pacific Hake-Whiting creates a formal process through which scientists and fishery managers from both nations will recommend annual total catches of Pacific whiting, also known as Pacific hake. This agreement would establish for the first time percentage shares of the trans-boundary stock of Pacific whiting for each nation. The treaty is designed to alleviate overfishing and to provide long-term stability for harvesters and processors.

The third treaty, the Convention on Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, provides for the long-term conservation and sustainable use of fish stocks, such as tuna, swordfish, and marlin. These important fish migrate across the high seas of the western and central Pacific Ocean, as well as through waters under fishery jurisdiction of several nations, including the United States. The Convention creates a new regional fishery management organization for this area.

Similarly, the convention for the strengthening of the Inter-American Tropical Tuna Commission, known as the Antigua Convention, provides for the long-term conservation and sustainable use of highly migratory fish stocks, such as tuna and swordfish, which range across the eastern Pacific. The Antigua Convention would update a 1949 convention to reflect improved methods in managing international marine reserves.

On our second panel, the committee will hear testimony from Warren Stern, Senior Coordinator for Nuclear Safety at the Department of State, and Mr. James Bennett McRae, Assistant General Counsel for Civilian Nuclear Programs at the Department of Energy. This will discuss the Convention on Supplementary Compensation for Nuclear Damage, known as the CSC. Adopted at a conference convened by the International Atomic Energy Commission, the CSC is an effort to create a global nuclear civil liability regime compatible with the existing U.S. nuclear civil liability law under the Price-Anderson Act.

The Price-Anderson Act, which was recently reauthorized by Congress in the comprehensive energy bill, has set the standard for nuclear liability in the United States for many years. The CSC is designed to limit the liability now facing United States suppliers of nuclear technology with respect to their activities in foreign markets. This treaty would help U.S. companies export nuclear safety technology to foreign nations. At the same time, the CSC's creation of a supplementary international fund is expected to help ensure that potential victims of a civil nuclear incident overseas will be adequately compensated.

The United States' ratification of the CSC could be a step toward establishing a common international nuclear liability standard. It would also encourage improvements in civilian nuclear plant safety overseas and provide liability standards that would level the playing field for American suppliers and bring more predictability to the market.

I commend the American negotiators who have worked on these five agreements, some of which are the product of years of patient diplomacy. We look forward to the contributions of our witnesses to our understanding.

I would like now to call upon the first panel. This is in fact the Honorable David Balton, Deputy Assistant Secretary of State. Secretary Balton, would you please proceed. I understand you will discuss the first four treaties that we are to hear this morning, and then we will have discussion of the fifth treaty with your colleagues at the table at that time.

Please proceed.

STATEMENT OF HON. DAVID A. BALTON, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. BALTON. Thank you very much, Mr. Chairman. I have a written statement and ask that it be included in full in the record, and that will be true of the statements of each of the witnesses today.

Thank you. I appreciate the opportunity to testify on four treaties relating to the oceans, the ones you outlined: the U.S.-Canada Agreement on Pacific Hake-Whiting; the Convention for the Strengthening of the Inter-American Tropical Tuna Commission, also known as the Antigua Convention; the Western and Central Pacific Fisheries Convention, and Annex VI to the MARPOL Convention.

Mr. Chairman, today's hearing takes place at a time of increased attention and concern about the oceans and their resources. The U.S. Commission on Ocean Policy presented its comprehensive report, "An Ocean Blueprint for the 21st Century," one year ago, detailing the many challenges we face in this regard. The administration has issued and has begun to implement the U.S. Ocean Action Plan, building on the Ocean Commission report and other initiatives. Congress is also considering several pieces of legislation to strengthen our stewardship of the oceans.

As these efforts move forward, we must recognize that no nation acting alone can address issues relating to the oceans fully or effectively. For fisheries and other resources that cross jurisdictional lines in the seas, we must secure the cooperation of other nations to conserve and manage those resources sustainably. Similarly, the control and reduction of pollution affecting the oceans, including air pollution from ships, require concerted international action.

All four of the oceans treaties before you today represent successful efforts to secure such cooperation. In each case, U.S. negotiating teams representing the full range of U.S. interests on these matters labored hard to reach the agreements. Due in large part to this inclusive approach, I am pleased to report that affected stakeholders in the United States support ratification of all four of these treaties. Indeed, I am aware of no opposition to any of them.

Of course, each treaty has its own unique purpose and particular features. Please allow me to summarize each in turn. I will begin with the U.S.-Canada agreement on Pacific whiting. This provides for the first time a stable and equitable basis on which our two nations can share a valuable stock of fish, known generally in the

United States as Pacific whiting and in Canada as Pacific hake. This fish stock occurs off the West Coast of North America from California to British Columbia. The fishery in the United States alone has a value of more than $20 million annually.

U.S. and Canadian scientists fishery managers have cooperated informally for many years to develop an annual overall total allowable catch, or TAC, for the stock. But our two countries have not been able to agree until now on how to divide the TAC between U.S. and Canadian fisheries. The United States has generally claimed and taken roughly 80 percent of the allowable catch, while Canada has claimed and taken roughly 30 percent. This situation, coupled with other factors, led to a decline in the stock. In 2002 the Department of Commerce declared the stock to be overfished.

The Pacific whiting agreement reflects a commitment by both nations and their respective industries to resolve this issue for the sake of the stock and for the sake of the fishery. The agreement assigns almost 74 percent of the TAC to the United States and slightly more than 26 percent to Canada. The agreement also formalizes the means by which U.S. and Canadian scientists and fisheries managers will determine the total catch each year. Stakeholders from both countries will have significant input into this process.

I will now turn to the Convention for Strengthening the Inter-American Tropical Tuna Commission. In 1949, as you said, Mr. Chairman, the United States and Costa Rica developed an initial treaty to create the Inter-American Tropical Tuna Commission, or the IATTC, as an international fisheries organization to conserve and manage the fisheries for tuna and related species in the eastern Pacific Ocean. The IATTC now has 14 members as well as five other states and entities that participate in its work.

The years since the inception of the IATTC have witnessed dramatic changes in international law and norms relating to ocean fisheries. In light of these changes, the states and entities participating in the IATTC agreed to renegotiate the original treaty, primarily to incorporate modern principles of fisheries management. Negotiations resulted in the Convention before you today, which the United States signed on November 14, 2003.

The Antigua Convention, named for the city in Guatemala where it was adopted, will significantly strengthen the legal and policy framework on which the valuable work of the IATTC rests. Early U.S. ratification would provide valuable momentum to bring the Convention into force and would demonstrate our continued commitment on and leadership in international fisheries issues.

The Western and Central Pacific Fisheries Convention establishes a brand new international fisheries organization to conserve and manage tunas and related species in that portion of the Pacific Ocean not covered by the IATTC. These two organizations, the IATTC and the Western and Central Pacific Fisheries Commission, will together provide for sustainable management of fisheries throughout the Pacific Ocean.

The tuna fisheries of the western and central Pacific are the largest and most valuable in the world. Implementation of this convention offers the opportunity to conserve and responsibly manage

these resources while the threat of overfishing and overcapacity are still at a manageable stage.

This Convention entered into force more than 1 year ago. Given the central role that the United States played in its negotiation and the significance of these fisheries to U.S. commercial and environmental interests, the administration believes that it is high time for the United States to take its seat at the table as a party to this treaty.

Finally, the International Convention for the Prevention of Pollution from ships, also known as MARPOL, is the primary treaty to control the accidental and operational discharges of pollutants from ships. The convention, negotiated under the auspices of the International Maritime Organization, now consists of a framework agreement as well as six annexes, each of which addresses a particular source of ship-based pollution. The United States is already a party to MARPOL and four of its annexes.

Annex VI, before you today, deals with air pollution from ships. It does so in part by establishing design standards for marine diesel engines installed after 1 January 2000 for the reduction of oxides of nitrogen. The Annex also sets a global cap of 4.5 percent on the sulphur content of marine fuels, as well as a mechanism for reducing the sulphur content to 1.5 percent in particular areas, so-called SO_X emission control areas. The administration contemplates seeking the establishment of such areas in waters adjacent to North America where ship emissions contribute to air quality problems in the United States, Canada, and Mexico.

Annex VI also prohibits the deliberate emission from ships of ozone-depleting substances, including halons and CFCs, and prohibits the incineration onboard ship of certain products, such as contaminated packaging materials and PCBs. Annex VI entered into force on May 19 of this year. There are currently 27 parties to it, representing almost two-thirds of the world's tonnage of merchant ships.

U.S. ratification will enhance our ability to work through the IMO to establish even more stringent global emission reduction standards in the future.

Thank you, Mr. Chairman, for the opportunity to discuss these issues. I would be happy to answer any questions you may have. I also have with me Mr. Brian Wood-Thomas of the Environmental Protection Agency to help me in responding to any technical questions relating to MARPOL Annex VI. Thank you.

[Secretary Balton's prepared statement follows:]

PREPARED STATEMENT OF HON. DAVID A. BALTON

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I appreciate the opportunity to testify today on four treaties relating to the oceans:

- the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting (Whiting Agreement);
- the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (Antigua Convention);
- the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (WCPF Convention); and

- the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 thereto (MARPOL Annex VI)

The first three of these treaties concern the conservation and management of vital fisheries resources shared between the United States and other nations. The fourth treaty regulates air pollution from ocean-going vessels. The administration urges the Senate to review all four of these agreements favorably, with a view to providing advice and consent to their ratification as soon as possible.

Mr. Chairman, today's hearing takes place at a time of increased attention and concern about the oceans and their resources. The U.S. Commission on Ocean Policy presented its comprehensive report, "An Ocean Blueprint for the 21st Century," one year ago, detailing the many challenges we face in this. regard. The administration has issued and has begun to implement the U.S. Ocean Action Plan, building on the Ocean Commission report and other initiatives. Congress is also considering a number of pieces of legislation to strengthen the ability of this Nation to act as a proper steward of the oceans.

As these efforts move forward, we must recognize that no nation acting alone can address issues relating to the oceans fully or effectively. For fisheries and other resources that cross jurisdictional lines in the seas we must secure the cooperation of other nations to conserve and manage those resources sustainably. Similarly, the control and reduction of pollution affecting the oceans—including air pollution from ships—requires concerted international action.

All four treaties before you today represent successful efforts to secure such international cooperation. In each case, U.S. negotiating teams, representing the full range of U.S. interests on these matters, labored hard to reach the agreements. Due in large part to this inclusive approach, I am pleased to report that affected stakeholders in the United States support ratification of all these treaties. Indeed, I am aware of no opposition to them.

Of course, each treaty has its own unique purpose and particular features, as outlined below. Ratification of each treaty would also require the enactment of legislation to implement U.S. obligations.

Mr. Chairman, I will now present a brief summary of each treaty.

AGREEMENT WITH CANADA ON PACIFIC HAKE/WHITING

This Agreement with Canada provides, for the first time, a stable and equitable basis on which our two nations can share a valuable stock of fish whose range includes Pacific waters off of our respective West Coasts. This fish, known generally in the United States as Pacific whiting and in Canada as Pacific hake, is used principally in the manufacture of surimi, which is the basis for such products as imitation crab legs and shrimp. The fishery, which takes place in waters off Northern California, Oregon, Washington, and British Columbia, was worth approximately $21.9 million to U.S. fishermen in 2004. The fish is processed both at sea and by land-based firms. The fishery also has a substantial economic impact on several fishing ports, such as Crescent City and Eureka in California and Astoria and Newport in Oregon.

Beginning in the 1970s, scientists and fisheries managers from the United States and Canada reached informal agreement on an annual overall total allowable catch (TAC) for the stock. The two countries conducted periodic joint stock assessments and agreed informally on certain management measures, but not the most important one—how to divide the TAC between U.S. and Canadian fisheries. The United States generally claimed 80% of the allowable catch, while Canada took 30%. This situation, coupled with other factors, led to a decline in the stock. In 2002, for the first time, the Department of Commerce declared the stock to be "overfished."

Following resumed talks in 2002, both sides agreed in principle in April 2003 to the text of a new long-term management and sharing arrangement. The Agreement, signed at Seattle on November 21, 2003, establishes a default harvest policy and assigns 73.88% of the TAC to the United States and 26.12% to Canada for an initial period of nine years, and thereafter unless the Parties agree to change it. It also creates a formal process through which U.S. and Canadian scientists and fisheries managers will determine the total catch of hake each year, to be divided by the percentage formula. Stakeholders from both countries will have significant input into this process.

The U.S. fishing industry strongly supports the Agreement. It not only allows the Parties to redress the overfishing that had led to the recent decline in stock levels, but also provides for long-term stability to U.S. fishers and processors and a structure for future scientific collaboration.

Legislation will be necessary to implement this agreement. The administration anticipates that such legislation will be relatively short and straightforward. We have already been in contact with relevant committees in Congress to suggest possible wording for such legislation.

CONVENTION STRENGTHENING THE INTER-AMERICAN TUNA COMMISSION

The Inter-American Tropical Tuna Commission (IATTC) is an international fisheries organization with a mission to conserve and manage the fisheries for tuna and related species in the Eastern Pacific Ocean. The treaty establishing the IATTC was initially concluded in 1949 as a bilateral agreement between the United States and Costa Rica. Since then, the organization has grown to include 14 members, as well as five other States and entities that enjoy the status of "cooperating non-parties."

Several years ago, the States and entities participating in the IATTC agreed to re-negotiate the original treaty, primarily to incorporate modern principles of fisheries management. Negotiations toward this end resulted in the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (IATTC), also known as the Antigua Convention, adopted on June 27, 2003, in Antigua, Guatemala. The United States signed the Convention on November 14, 2003.

The United States Government, represented by the Departments of State and Commerce, as well as stakeholders from the U.S. fishing industry and conservation community, played a central role in the negotiation of the Antigua Convention. The administration, supported by these stakeholders, believes that this treaty will serve as a strong and comprehensive basis for the future work of the IATTC. The Antigua Convention faithfully incorporates valuable provisions of other recent fisheries treaties, particularly the 1995 United Nations Fish Stocks Agreement, to which the United States is already a party. The Antigua Convention will also provide a sound legal framework for protecting U.S. interests in this fishery, including by creating a mechanism in which both the European Union and Taiwan can participate fully in the work of the IATTC and be bound by the regulatory measures adopted by that organization.

The Antigua Convention will enter into force fifteen months after the deposit of the seventh instrument of ratification, acceptance, approval, or accession by States that were Parties to the 1949 Convention on November 14, 2003. To date, 12 States and the European Commission have signed the Convention. Two countries, Mexico and El Salvador, have so far deposited instruments of ratification. In addition, Taiwan has signed an instrument declaring its firm commitment to abide by the terms of the Antigua Convention, subject to confirmation.

Early U.S. ratification would provide valuable momentum to bring the Antigua Convention into force and would demonstrate our continued commitment to and leadership on international fisheries issues. Although the United States could implement much of the Antigua Convention under existing statutory authority, the administration will propose legislation to effect certain changes in U.S. law, principally the Tuna Conventions Act of 1950, as amended, to provide the strongest basis for implementing the Antigua Convention.

CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE CENTRAL AND WESTERN PACIFIC OCEAN

Unlike the Antigua Convention, which is designed to strengthen the underlying treaty of an international fisheries organization that has existed for more than half a century, the Convention on the Conservation and Management of the Highly Migratory Fish Stocks of the Western and Central Pacific Ocean, with Annexes, ("the WCPF Convention"), establishes a brand new international fisheries organization to conserve and manage tunas and related species in that portion of the Pacific Ocean not covered by the IATTC. The two organizations will have complementary mandates intended to provide for effective and sustainable management of these fisheries throughout the entire Pacific Ocean.

The WCPF Convention was adopted on September 5, 2000, in Honolulu. The United States signed the Convention on that date. The Convention entered into force on June 19, 2004, and now boasts 20 parties. In addition, Taiwan has signed an instrument declaring its firm commitment to abide by the terms of the WCPF Convention, subject to confirmation. The United States is one of the few original signatories yet to ratify or accede.

The United States played a lead role during the negotiations on a wide range of issues. One such issue was the effort to afford membership in the Commission to Taiwan under the terms of the separate instrument noted above. As a result, for the first time in any regional fisheries organization, vessels from Taiwan will be bound by the terms of the Convention, including the conservation and management

measures adopted pursuant thereto. Similar arrangements were subsequently included in the Antigua Convention, discussed above, which was adopted after the adoption of the WCPF Convention.

The highly migratory fish stocks of the Western and Central Pacific are of great significance to the United States and the other nations involved in those fisheries. Indeed, the tuna fisheries in that region are the largest and most valuable in the world. Implementation of the WCPF Convention offers the opportunity to conserve and responsibly manage these resources while the threat of overfishing and overcapacity are still at a manageable stage, before conditions deteriorate as we have seen too often elsewhere in the world's oceans.

The WCPF Convention builds upon the 1982 United Nations Convention on the Law of the Sea (the LOS Convention) and the 1995 United Nations Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement). The WCPF Convention gives effect to the provisions of the LOS Convention and Fish Stocks Agreement that recognize as essential, and require, cooperation to conserve highly migratory fish stocks through regional fishery management organizations, by those with direct interests in them—coastal States with authority to manage fishing in waters under their jurisdiction and those nations whose vessels fish for these stocks.

The United States has direct and important interests in the effective implementation of the WCPF Convention. The United States is a major distant water fishing nation, with the fourth largest catch in the region. At the same time, the United States is the coastal State with the largest EEZ in the Convention Area (including the waters around Hawaii, American Samoa, Guam, the Northern Mariana Islands and other unincorporated islands under U.S. jurisdiction). Accordingly, U.S. fishing concerns, including the U.S. tuna industry, U.S. conservation organizations and U.S. consumers, as well as the residents of Hawaii and the U.S. Flag Pacific island areas of Guam, American Samoa and the Northern Mariana Islands, all have a crucial stake in the health of the oceans and their resources as promoted by the WCPF Convention.

PROTOCOL OF 1997 TO AMEND THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL OF 1978 THERETO (MARPOL ANNEX VI)

Negotiated under the auspices of the International Maritime Organization (IMO), the International Convention for the Prevention of Pollution from Ships (MARPOL Convention) is the primary international agreement to control the accidental and operational discharges of pollutants from ships. The Convention currently includes a framework agreement and six annexes that address particular sources of marine pollution from ships. The United States is already a party to MARPOL and four of its annexes.

Annex VI establishes an international framework addressing air pollution from ships and will make an important contribution to the protection of the environment by addressing harmful air pollutants from ships. In short, the Annex establishes design standards for marine diesel engines installed after 1 January 2000 for the reduction of oxides of nitrogen (NO_X) and establishes a global cap of 4.5 percent on the sulfur content of marine fuels, as well as a mechanism for reducing the sulfur content to 1.5 percent in particular areas (called SO_X Emission Control Areas) where SO_X reduction is considered necessary. The administration contemplates seeking the establishment of such areas in waters adjacent to North America where ship emissions contribute to air quality problems in the United States, Canada and Mexico. Annex VI also prohibits the deliberate emission of ozone-depleting substances, including halons and chlorofluocarbons, from ships and prohibits the incineration onboard ship of certain products, such as contaminated packaging materials and polychlorinated biphenyls (PCBs).

Annex VI entered into force on May 19, 2005. There are currently 27 parties to it, representing almost two thirds of the world's tonnage of merchant ships. U.S. ratification will enhance our ability to work through the IMO to establish more stringent global emission reduction standards in the future. To this end, the President has proposed a declaration expressing support for an Annex VI amendment to establish Tier II emission standards that will further reduce the agreed NO_X emission control limits. The President has proposed one other declaration regarding the application of Regulation 15 concerning volatile organic compound emissions (VOCs). Most importantly, the President has also proposed a formal understanding highlighting the point that Parties are permitted to impose more stringent NO_X limits as a condition of entry into their ports. The United States is presently engaged in discussions at the IMO to explore more stringent standards for NO_X and sulfur

content of marine fuels. The discussions currently underway at IMO will also consider standards for particulate matter (PM), volatile organic compounds (VOCs), and expansion of the Annex to include non-diesel engines.

Before closing, Mr. Chairman, I note that the administration continues to press forward on other international agreements pertaining to the oceans and looks forward to working with the committee once again.

Thank you, Mr. Chairman, for the opportunity to discuss these issues. I would be happy to answer any questions from the members of the committee.

The CHAIRMAN. Thank you very much, Secretary Balton, for your comprehensive opening statement that was made a part of the record and likewise your testimony this morning.

I am going to raise questions initially about the first four treaties because they are different in character than the final treaty and we will take it up separately, after you have responded to these questions. The answers to some of these questions you have either testified upon or more comprehensively addressed in your lengthier statement. But for the sake of the record, so that it is clear to all Senators who are watching at least the work of the committee and considering their support of ratification, please respond if you can briefly to each of these questions.

How would implementation of the Pacific hake-whiting agreement affect the Pacific whiting industry in the United States? Specifically, do you expect it to have an economic impact on United States ports and facilities used by this fishery and what effects do you foresee for the fish stock?

Mr. BALTON. Thank you, Mr. Chairman. The whiting agreement has a very limited purpose, which is to set a total allowable catch of this stock annually and divide it between U.S. and Canadian fisheries. All other aspects of managing the fishery for this stock in the United States will remain unaffected by the agreement.

But, that said, I do anticipate that the agreement will have a very positive effect on both the stock and on the industry in the United States that relies on it. The collective overfishing that the U.S. and Canada have engaged in in the absence of this agreement contributed to the decline of the stock. Now, with this agreement we have the ability to prevent such overfishing, which should increase the possibility for long-term sustainable harvests.

The CHAIRMAN. How does the agreement relate to the work of the Pacific Fishery Management Council and the Department of Commerce, which are currently responsible for setting the total allowable catch and for any sub-allocation of the fish stock within the United States, and would the agreement impact existing United States procedures for sub-allocation of the U.S. catch for Pacific whiting?

Mr. BALTON. Thank you, Mr. Chairman. Under the agreement, each year Canada and the United States will work together to produce a total allowable catch, which will then be divided under the percentage formula agreement between the U.S. fishery and the Canadian fishery.

The responsibility of the Pacific Fishery Management Council of the United States for managing all aspects of the U.S. share will not change. Similarly, the responsibility of the Department of Commerce for overseeing the work of the council in this respect will not change.

The CHAIRMAN. Thirdly, I understand that United States stakeholders, both industry and environmental groups, are supportive of the agreement, as you have testified. Please mention how and if they were consulted during negotiation of the agreement and, looking forward, will United States stakeholders have any input into the process envisioned by the agreement for setting the total allowable catch each year? In other words, does the administration foresee a formal role for them in any of the bodies to be set up under the agreement and, if so, how would the United States choose the individuals who would serve on these boards?

Mr. BALTON. Mr. Chairman, U.S. stakeholders participated very actively in the negotiations that produced the whiting agreement. Among those who took direct part in the negotiations as members of the U.S. delegation were: the Pacific Fisheries Management Council itself, through its chair and executive director; representatives of the State governments of Washington and Oregon; representatives of four different U.S. industry user groups, including one Indian tribe, the Maccah Indian Tribe. Two U.S. environmental groups, also monitored the negotiations and provided input into U.S. positions.

Indeed, I can say with certainty, Mr. Chairman, that the agreement would not exist but for the active involvement of all these stakeholders in creating it.

Now, looking ahead, U.S. and Canadian stakeholders will have a very meaningful role in the implementation of this agreement. The joint technical committee and the scientific review group established by the agreement will each have independent members nominated by a stakeholder advisory group. U.S. members of the joint management committee under the treaty will, under legislation we have suggested, include stakeholder representatives as well.

In addition, article 2, paragraph 4 of this agreement creates this advisory panel and gives it an ongoing right to provide input in the development of the overall TAC each year.

The CHAIRMAN. Finally, with regard to this treaty, I understand that implementing legislation will be required for this agreement. What areas would be addressed in this legislation and will the administration be seeking any new authorities to implement the agreement?

Mr. BALTON. Yes, Mr. Chairman, legislation for this agreement is necessary in order to implement U.S. obligations under it. We have provided informal suggestion for such legislation to your colleagues on the Senate Commerce Committee and the House Resources Committee as well. The legislation we suggest would allow for the United States to appoint individuals to the various bodies created under this agreement. The legislation would give the Secretary of Commerce authority to issue regulations relating to this treaty and would prohibit acts inconsistent with the treaty. This piece of legislation would most likely be a new free-standing law rather than an amendment to any existing statute.

The CHAIRMAN. I thank you.

Let me ask questions with regard to the Antigua Convention. What is the status of the highly migratory fish stocks under the jurisdiction of the Inter-American Tropical Tuna Commission? Are any of these considered to be overfished and how will the Antigua

Convention, how will it improve the commission's ability to manage these stocks?

Mr. BALTON. Generally speaking, Mr. Chairman, the highly migratory stocks of the Pacific Ocean, including those in the eastern Pacific which this treaty covers, are thought to be in reasonably good shape relative to most stocks in the world. But there are warning signs on the horizon. There is overcapacity, too many vessels in this fishery, we believe, and we are worried as well about issues of bycatch and other degradation of the marine environment that could threaten these stocks in the future.

The Antigua Convention would give us a much stronger basis to deal with these problems. By incorporating the modern principles of fishery management, we will have the ability through this treaty to take firmer action to address potential overfishing, overcapacity, illegal fishing, effects of fishing on associated independent species.

The CHAIRMAN. The Antigua Convention will replace the 1949 convention that created the IATTC. Following entry into force of the Antigua Convention, what will be the status of the measures taken by the IATTC under the 1949 convention?

Mr. BALTON. Mr. Chairman, I am confident that there will be a seamless transition between the regime of the 1949 treaty and the new agreement. Indeed, there are provisions in the Antigua Convention that would provide for such a seamless transition. There will be a period of time during which the Antigua Convention is in force, but not all of the parties to the original treaty have as yet ratified, but there are ways to bridge that gap such that the measures adopted by this organization, the IATTC, will continue to be effective, all the assets will be preserved, and we will be moving forward cooperatively with our colleagues in this organization.

The CHAIRMAN. The Antigua Convention requires the IATTC to make decisions on the basis of consensus. How has this requirement for consensus affected the IATTC's actions in the past? Has it prevented the commission from taking measures that the United States believed were necessary to properly manage the fish stocks under its jurisdiction?

Mr. BALTON. You are right, Mr. Chairman, that this organization has always operated on the principle of consensus, and at least to date I would say that that principle has served the U.S. and the other nations in this organization well. The organization has been marked by a strong spirit of cooperation. There are very few times, if ever, in its history that one nation has tried to block consensus.

There are important issues facing this regime in the future, but we are confident that the consensus rule will not prevent movement forward on these issues.

The CHAIRMAN. With how many parties must consensus be gained? How many are around the table?

Mr. BALTON. There are currently 14 members of the IATTC and then there are five other states and entities that participate in its work. Under the new agreement, which can enter into force with seven of those original parties ratifying, it is the parties that come together to make up consensus. As a practical matter, Mr. Chairman, though, everybody around the table has a voice.

The CHAIRMAN. What is the current budget for the commission and will this change under the Antigua Convention? What is the

anticipated United States financial contribution and how are such contributions to be determined?

Mr. BALTON. There are several different aspects of that question. The current U.S. contribution to the IATTC is roughly $2 million a year. That is actually considerably less than it has been at some points in the past. Our $2 million contribution represents roughly 40 percent of the budget of this organization. We are one of the relatively few developed countries in this organization.

The treaty before you today does not set the contribution rules. Those will be set on the basis of agreement within the organization. My expectation is that U.S. contributions to this organization will not change appreciably under the new agreement. Indeed, the new agreement will allow the European Union and also Taiwan to become full members of this organization, and their contributions to the budget may help to reduce U.S. costs in the organization.

The CHAIRMAN. You have mentioned that 14 countries were parties to the 1949 convention that established the IATTC. Will they in your judgment vote to ratify the new convention and are other eligible countries expected to join the 14?

Mr. BALTON. Yes to both questions, Mr. Chairman. I do believe that all of the members of the original convention will move to ratify the Antigua Convention. That said, I think the U.S. ratification will be a great spur to those who have not yet completed their processes. A lot of the countries around the table are waiting to see what we will do. But once we move forward I am confident they will as well, and indeed some other countries whose vessels fish in the region may join the organization.

The CHAIRMAN. In your testimony you have mentioned that the administration will propose implementing legislation for this convention. When do you expect that to happen and what types of changes will the administration seek?

Mr. BALTON. Yes, we are going to propose formally legislation to implement this agreement. The legislation to implement the agreement would take the form of a series of proposed amendments to an existing statute that implements the existing treaty, the so-called Tuna Conventions Act of 1950. It is my anticipation that this legislation will come before Congress in the very near future. It is in the final stages of clearance within the administration.

The CHAIRMAN. Let me raise some questions on the third treaty, the Western and Central Pacific Fishery Convention. What is the status of the highly migratory fish stocks to be governed by the WCPF convention and what impact will the convention have on these fish stocks? How is it expected to affect specifically the United States fishery industry?

Mr. BALTON. Mr. Chairman, my answer to this question is very similar to my answer to that question as it related to the Antigua Convention. The status of the highly migratory fish stocks in the western and central Pacific Ocean is generally speaking considered to be good relative to the status of similar stocks in other parts of the world. That said, there are warning signs on the horizon, especially with respect to bigeye tuna. There are problems of overfishing and overcapacity in the region, illegal fishing, bycatch.

Once again, the entry into force of this agreement has provided a new tool, in this case for the very first time, to deal with these problems on a cooperative multilateral basis.

For the United States in particular, it is very important that we be at the table as a very large segment of our tuna industry fishes in this region of the world, the western and central Pacific.

The CHAIRMAN. How will the commission created under the WCPF convention coordinate with other regional fishery management organizations, such as the IATTC that we have just been discussing, that are managing similar species in other areas?

Mr. BALTON. As you say, Mr. Chairman, there must be coordination between the WCPFC, the commission, and the IATTC, that commission, because they do cover many of the same species that range throughout the entirety of the Pacific Ocean. There are provisions in each of these treaties that require cooperation and compatibility of measures adopted across the Pacific by these sister organizations.

There will be as well interaction between the Western and Central Pacific Convention and the commission created by it and some other regional fishery organizations, including the Commission for the Conservation of Southern Bluefin Tuna, an organization to which the United States is not party, that does have overlapping jurisdiction on the other side, the area around Australia, New Zealand, and out into the Indian Ocean.

The CHAIRMAN. Article 43 of the convention provides for participation in the work of the commission and its subordinate bodies short of voting rights by dependent territories located in the convention area, including American Samoa, Guam, and the Northern Mariana Islands, with appropriate authorization from the parties that have responsibility for their foreign affairs. Does the administration plan to authorize the participation of these United States territories and did the administration work with these territories during negotiation of the convention?

Mr. BALTON. Yes and yes, Mr. Chairman. Pending the finalization of discussions with representatives of the territories themselves, the administration expects to authorize the participation of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands to participate in the work of this agreement. These territories as a result would be allowed to sit at the table in their own name and right and to speak on issues in which they have a direct interest.

This is consistent with the approach taken in other organizations in the Pacific region, such as the Secretariat of the Pacific Community and the South Pacific Regional Environmental Program.

The CHAIRMAN. What is the current budget of the commission and is it expected that that budget may increase as the work of the commission develops? Once again, what is the United States' contribution to the commission? How will the contributions of the parties be determined?

Mr. BALTON. This commission, although it has already been established, is still in its infancy and its initial budget is not as robust as we expect it to become in the coming years as it takes on some of the important management functions it is charged with

overseeing. We estimate that an initial U.S. contribution will probably be in the order of $150,000 or so.

Because there are already 20 parties to this treaty, including some developed countries such as Japan, we will not have to share nearly as large a burden in the budget of this commission as for the IATTC.

The CHAIRMAN. As you have just mentioned, the commission has just been in force since June 2004. In fact, has the commission met yet? What work has it undertaken and to what extent was the United States able to participate in that work?

Mr. BALTON. Yes, Mr. Chairman, the commission has already met and will meet again in December. There are a number of subsidiary bodies and less formal meetings that take place under the general auspices of the convention. The United States has been able to participate fully and effectively in these organizations—in these bodies, I should say—despite the fact that we have not yet ratified, because everyone expects us to and because of the history of the United States in helping to craft the treaty.

I do not know how long that goodwill would last if we did not ratify some time soon, though, and that is why we are here today to urge you to consider this favorably.

The CHAIRMAN. As one further piece of housekeeping, is there any implementing legislation necessary for this treaty to comply with the WCPF convention, and if so what is the status of legislation and what might it address?

Mr. BALTON. Thank you, Mr. Chairman. Yes, legislation would be necessary to implement this agreement as well. We are also in the final stages of clearance within the administration and hope to have such legislation to propose to Congress formally in the very near future. The legislation that we propose—this will sound familiar to you—will allow for the appointment of U.S. individuals to participate in the scientific and management activities that take place under this treaty. The legislation would authorize the Secretary of Commerce to issue regulations relating to the treaty. It would prohibit acts inconsistent with the treaty. It would authorize the appropriation of funds related to the treaty.

This particular piece of legislation would, like the whiting legislation, almost certainly need to be a free-standing piece rather than a set of amendments to an existing law.

The CHAIRMAN. I thank you.

Now let me ask questions on the fourth treaty, the MARPOL Annex VI. First of all, fundamentally why is the treaty needed? What is the scope of air pollution problems from ships, particularly as it relates to the United States?

Mr. BALTON. Mr. Chairman, this annex represents the first time the international community has agreed on any standards relating to air pollution from ships. It is very much in the U.S. environmental and commercial interests that there be an agreed set of standards. As shipping is inherently international in nature, the U.S. alone cannot hope to regulate by itself air pollution from ships that visit U.S. ports that are flagged to foreign countries.

Through MARPOL Annex VI, we have a mechanism to create a common set of standards that will both protect the air quality in

U.S. ports and also set a common industry standard that U.S. vessels can adhere to as they sail around the world.

The CHAIRMAN. Annex VI to MARPOL places a number of requirements on ships. To what extent are U.S.-flag ships equipped to comply with these requirements? What economic impact would compliance with these requirements have on United States ships? Similarly, to what extent are foreign flag ships able to meet the requirements, and what would be the impacts on those foreign flag ships traveling to U.S. ports and waters?

Mr. BALTON. Mr. Chairman, with respect to U.S. flag vessels, I can say that most, if not all, are already in compliance with the standards set by Annex VI, and therefore the cost to the U.S. industry will be minimal. The current global cap of 4.5 percent concerning sulphur content in marine fuels will have little or no impact on the U.S. and marine fuel markets currently since the overwhelming majority, approximately 98 percent, of marine fuels fall under this figure.

Now, there will be ongoing discussions within the IMO about the possibility of making more stringent standards and the economic impact of those standards, including on U.S. vessels, will of course be a factor in those discussions.

The CHAIRMAN. That partially anticipates my next question, because Annex VI establishes international standards for controlling air pollution, but would Annex VI prohibit the United States from implementing standards more stringent than those in Annex VI?

Mr. BALTON. No, Mr. Chairman. Indeed, the administration is proposing a declaration to accompany a ratification of Annex VI making clear that a port state, such as the United States, can establish more stringent standards with respect to vessels entering our ports.

The CHAIRMAN. My understanding is that Annex VI allows for the establishment of sulphur oxide emission control areas, SECAs, in which ships are required to abide by more stringent regulations on sulphur oxide emissions. Annex VI establishes the Black Sea as one such area and the International Maritime Organization has approved the North Sea as a SECA.

What is the process for approval declaring an area to be an SECA area and is the United States considering requesting the designation of any of U.S. waters as SECAs?

Mr. BALTON. I can answer the second part of that question, Mr. Chairman. I may ask my colleague from the EPA to help answer the first part.

With respect to the second part, yes, we are considering the possibility of submitting to IMO a proposal to establish one or more SECAs in the United States or waters off the United States, on all three of our ocean coasts, Pacific Ocean, Atlantic Ocean, and Gulf Coast.

Let me ask Mr. Wood-Thomas from the EPA to help address your question about what the precise processes within IMO for establishing such a SECA.

The CHAIRMAN. Mr. Thomas, would you come to the table, please.

Mr. WOOD-THOMAS. Thank you, Mr. Chairman. With respect to the establishment of a SO_X emission control area, the treaty outlines specific criteria that must be met. Procedurally, a party or a

group of parties may come forward with a proposal. That in fact has to be approved by parties to the agreement. A formula specifies that approval must be made by at least two-thirds of the parties present and voting.

The CHAIRMAN. How many parties are there likely to be? Two-thirds of how many?

Mr. WOOD-THOMAS. Presently there are 27 parties. We are aware that there will be a considerable addition to that figure since the EU is committed to ratification.

The CHAIRMAN. Thank you very much.

How does Annex VI apply to platforms and drilling rigs at sea and what requirements must they follow?

Mr. BALTON. Consistent with the structure found in the other annexes of MARPOL, the requirements with respect to platforms apply to those emissions that operate from auxiliary equipment on platforms. Those emissions arising directly from exploration and production operations on the platforms are exempt.

The CHAIRMAN. Annex VI limits the sulphur content of any fuel oil used on board to 4.5 percent by weight or 45,000 parts per million. But the present average in the global fleet is 2.7 percent by weight or 27,000 parts per million, well below this requirement. If the United States becomes a party to Annex VI, will it be possible to amend the agreement to require further reductions in sulphur content or any of the other requirements?

Mr. BALTON. Thank you, Senator. Indeed, the question of sulphur content will be a point of discussion in negotiations that are now under way at the International Maritime Organization. In addition to the global cap of 4.5 percent, I think most of the political will will focus on the question of whether we might lower the 1.5 percent figure for SO_X emission control areas. Essentially, that is going to be a decision and a discussion very much influenced by what we believe the fuel markets can bear and the economics associated with that, and we are presently looking at that issue.

The CHAIRMAN. I thank you.

Annex VI requires United States ships and foreign ships entering our ports to be in compliance with this requirement. What regulatory regimes are in place to enforce these provisions?

Mr. WOOD-THOMAS. The implementing legislation for Annex VI will come in the form of a set of amendments to the Act to Prevent Pollution from Ships. In addition, we currently have regulations applicable to oxides of nitrogen under the Clean Air Act that are applicable to different categories of marine diesel engines.

The CHAIRMAN. Finally, is any implementing legislation required on this treaty necessary to bring United States law in accord with Annex VI, and if so what is the status of that legislation?

Mr. BALTON. Yes, Mr. Chairman, we believe that legislation would be necessary to fully implement U.S. obligations under Annex VI. The legislation, as Mr. Wood-Thomas just said, would likely take the form of a series of amendments to an existing law, the Act to Prevent Pollution from Ships. Such legislation once again is in the very final stages of development and clearance within the administration and the administration hopes to have it before Congress very shortly.

The CHAIRMAN. I thank you very much, Secretary Balton and Mr. Thomas, for your testimony on each of these four treaties. You have made an excellent record, I believe, and obviously demonstrated that the administration has been thoughtful about the parameters of the treaties and the implications for the other parties, as well as for United States parties, and we thank you for that consideration.

I would like now to turn to the Convention on Supplementary Compensation for Nuclear Damage. We welcome our witnesses on this occasion: Mr. Warren M. Stern, Senior Coordinator for Nuclear Safety in the Department of State; and James Bennett McRae, Assistant General Counsel, Civilian Nuclear Programs, in the Department of Energy. Gentlemen, we are appreciative of your coming today and, as I have indicated, your full statements will be made a part of the record. But please proceed in any way that you think would be helpful for consideration of this treaty.

STATEMENT OF WARREN M. STERN, SENIOR COORDINATOR FOR NUCLEAR SAFETY, DEPARTMENT OF STATE

Mr. STERN. Thank you, Mr. Chairman. I appreciate the opportunity to testify before you today on the Convention on Supplementary Compensation for Nuclear Damage. As you noted, I have submitted detailed testimony for the record and will provide a summary now so that we can quickly get to the questions that you have on this important treaty.

I would note that, in addition to Mr. McRae, who was part of the negotiating team for the treaty, we also have with us today Marjorie Nordlinger from the Nuclear Regulatory Commission, who can help to answer questions.

The CHAIRMAN. Would you please identify——

[Ms. Nordlinger raises her hand.]

Mr. STERN. Marjorie was part of the negotiating team.

The CHAIRMAN. Excellent.

Mr. STERN. As well as Ms. Julie Herr from State Department also.

The CHAIRMAN. Great.

Mr. STERN. Mr. Chairman, the CSC lays the foundation for a global legal regime governing civil nuclear liability. This is a regime that does not currently exist. This regime will benefit victims of nuclear incidents, U.S. suppliers of nuclear equipment and technology, and the government of the United States. United States leadership is essential in developing participation in this global nuclear liability regime.

At its core, the CSC provides predictable procedures to assure that in the event of a nuclear incident resources will be available from both domestic and international sources to compensate victims. The CSC incorporates three well-accepted principles for dealing with nuclear liability. The first principle requires that all claims resulting from a covered nuclear incident be adjudicated in a single forum. In nearly all cases that forum would be the courts of the party in whose territory the nuclear incident occurs.

The second principle is that liability for all claims is channeled to the operator of the nuclear installation. The third principle is

that the operator has strict liability, that is there is no need to prove fault, in the case of an incident.

U.S. participation in this liability regime will allow its exporters of nuclear technology and equipment to compete more effectively in foreign markets. Today these firms are exposed to potentially unlimited liability claims and believe that they are disadvantaged in terms of—in relation to their foreign competitors.

Mr. Chairman, in previous international efforts a global liability regime failed for two key reasons. The Vienna Convention on Civil Liability failed because it does not include the U.S., the world's largest nuclear generator, as well as non-nuclear states. The U.S. could not join the Vienna regime because it would require that the U.S. alter our fundamental tort law system, a step that we have been unwilling to take. The Vienna Convention also does not provide an incentive for non-nuclear states to join.

The CSC addresses the first of these problems by providing a grandfather clause that allows the U.S. to join without altering our fundamental tort law system. The incentive problem, that is for non-nuclear generating states, is solved by the creation of a supplementary fund of roughly $450 million at its maximum to ensure that there is an international fund to compensate victims of these non-nuclear generating states in the case of a nuclear incident.

Mr. Chairman, to date 13 countries have signed the CSC and 3 have ratified it. U.S. leadership is essential. This is a small number. The CSC was created in essence for us and by us. It was created to deal with our fundamental problems with the international regime as it existed. Without U.S. leadership, the regime will go nowhere.

We seek your advice and consent and appreciate your consideration.

I will now turn to Mr. McRae from the Department of Energy.

[Mr. Stern's prepared statement follows:]

PREPARED STATEMENT OF WARREN STERN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I appreciate this opportunity to discuss with you the Convention on Supplementary Compensation for Nuclear Damage ("CSC"). On November 15, 2002, the President transmitted the CSC to the Senate for advice and consent to ratification. We urge that the Senate give its advice and consent to ratification.

The CSC lays the foundation for a global legal regime governing civil nuclear liability—a regime that does not currently exist. This regime will benefit victims of nuclear incidents, United States suppliers of nuclear equipment and technology, and the Government of the United States, as well as other countries around the world that become parties.

United States leadership is essential in developing and encouraging participation in this global civil nuclear liability regime.

At its core, the CSC provides predictable procedures to assure that, in the event of a nuclear incident, resources will be available, from both domestic and international sources, to compensate victims.

The CSC incorporates three well-accepted principles for dealing with nuclear liability. The first principle requires that all claims resulting from a covered nuclear incident be adjudicated in a single forum. In nearly all cases, that forum would be the courts of the Party in whose territory the nuclear incident occurs. The second principle is that liability for all claims is channeled to the operator of the nuclear installation. The third principle is that the operator has strict liability without the need to prove fault).

United States participation in this liability regime will also allow its exporters of nuclear technology and equipment to compete more effectively in foreign markets.

Today, these firms are exposed to potentially unlimited liability claims through their foreign businesses and consider themselves to be at a disadvantage from their foreign competitors.

Once the United States and the state whose nationals are involved are both Parties to the CSC, liability exposure will be channeled to the operator in the "installation state," thus substantially limiting the nuclear liability risk of United States suppliers. Once the CSC is widely adopted, the United States nuclear supplier industry will be able to compete abroad under a single set of rules.

The CSC will also support United States objectives of improving nuclear safety globally. Once widely adopted, the CSC will eliminate ongoing concerns on the part of United States nuclear suppliers about damage claims by victims of accidents at a facility where they have supplied safety-related equipment.

The CSC is divided into two parts, a main body and an annex. The main body creates mechanisms for compensating nuclear damage caused by a nuclear incident in an installation operated within a state that is a CSC Party. The Annex contains a grandfather clause specifically designed to permit the United States to join the CSC without substantive change to the Price-Anderson system.

Under the regime created by the CSC, the first tier of compensation is provided by funds made available under the laws of the Party within whose territory the installation at which the nuclear incident occurred is situated, or if the installation is not situated within the territory of any state, the Party by which or under the authority of which the nuclear installation is operated. The minimum first tier compensation level for CSC Parties is set at a convertible currency equivalent to 300 million special drawing rights (SDRs)[1] (about $450 million at current rates of exchange). There is, however, provision for a phase-in period ending in 2007, until which time states may join the CSC with a first tier amount equivalent to not less than 150 million SDRs (about $225 million).

The second tier of compensation is provided by the international supplementary compensation fund that gives the CSC its name. Approximately 90 percent of the international supplementary fund would be made up of contributions assessed on the basis of the nuclear power generating capacity (if any) of each Party to the CSC at the time the incident occurs; the remainder would be made up of contributions assessed on the basis of each Party's United Nations assessment.

Were all major nuclear power generating states party to the CSC today, the international supplementary fund would provide in excess of 300 million SDRs to compensate victims. Of this amount, the United States, as it possesses about one-third of the world's nuclear generating capacity, would be obligated to contribute the U.S. dollar equivalent of approximately 100 million SDRs (about $150 million). Until a substantial number of nuclear power generating states are parties, the United States contribution would be less.

The administration has proposed legislation to provide for financing the United States contribution to the supplementary fund in the event of an accident outside the United States in a manner that does not impose a cost on United States taxpayers. My DOE colleague will provide greater explanation of this proposed legislation.

A third tier of compensation would be available in some states, such as the United States, that make available national funds of more than 300 million SDRs under domestic legislation. States that make available third tier funds are free to raise and distribute them in accordance with domestic law. With respect to accidents within the territory of the United States, the United States would use Price-Anderson funds for the third tier of compensation, as necessary.

In previous international efforts, a global liability regime failed for two key reasons. The Vienna Convention on Civil Liability for Nuclear Damage ("Vienna Convention") does not include the United States—the world's largest nuclear power generator—because it would require that the United. States alter its fundamental tort-law system—a step the U.S. is unwilling to take. The Vienna Convention also does not provide an incentive for non-nuclear power generating states to give up the jurisdiction of their own courts and laws in the event of a nuclear accident outside their territory, in order to join that regime.

The CSC addresses the first of these problems by providing the grandfather clause in Article 2 of the Annex that allows the United States to become a Party without alteration of Price-Anderson as it currently exists.

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[1] The SDR is an international reserve asset, created by the IMF in 1969, which serves as the unit of account of the IMF and other international organizations. Its value is based on a basket of key international currencies. As of 21 September 2005, its value was listed as 1 SDR = 1.46414 USD.

The "incentive" problem for non-nuclear generating states is addressed by the international supplementary fund. Fifty percent of the fund is reserved to compensate damage occurring outside the "installation state" (transboundary damage), including transboundary damage occurring in a non-nuclear power generating Party. The availability of this fund, especially as half of it must be applied toward transboundary damage, creates a strong incentive for such non-nuclear states to join the regime, creating for the first time the potential for a nuclear liability convention that will apply globally.

To date, 13 countries have signed the CSC, and three have ratified it. This is a small number. We want to create a global regime. However, the CSC was created in large part by the United States, to deal with a situation unique to the United States. Other major nuclear power generating states, and non-nuclear power generating states will not join the regime unless the United States leads the way. The administration seeks the advice and consent of the Senate to ratification of the CSC so that the United States can credibly promote the benefits of bringing the CSC into force and achieving widespread adherence.

Thank you. for the opportunity to discuss the CSC. Let me introduce my colleagues from the Department of Energy who are here with me to present additional testimony.

The CHAIRMAN. Mr. McRae.

STATEMENT OF JAMES BENNETT McRAE, ASSISTANT GENERAL COUNSEL, CIVILIAN NUCLEAR PROGRAMS, DEPARTMENT OF ENERGY

Mr. MCRAE. Thank you, Mr. Chairman. I appreciate this opportunity to testify and I will try to keep my remarks short and not repeat too much of what is in my written testimony or repeat what Mr. Stern has already said.

In the early 1990s there were increasing concerns over nuclear liability by U.S. suppliers. After considering various options, the United States Government decided that the best way to address these concerns was to become engaged in the ongoing negotiations over nuclear liability at the International Atomic Energy Agency and to seek a global nuclear liability regime.

After more than 5 years, in 1997 there was a diplomatic conference that adopted the Convention on Supplementary Compensation. The U.S. had taken the lead in promoting that convention and I am happy to say that we were very successful in getting our objectives. Our objectives were to have a regime—our objective was to have a regime that would be attractive to nuclear and non-nuclear countries. To do that, we have provisions that require each member country to have national law that basically incorporates the principles of nuclear liability that were first developed here in the United States in the 1950s when we adopted the Price-Anderson Act.

We also had provisions that provide for substantial compensation in the event of a nuclear accident without protracted litigation. The amounts that we achieved, while not as high as what is currently provided here in the U.S., for most other countries represent a substantial increase in the amount of compensation that would be available.

We also were successful in having a definition of environmental damage adopted that was much closer to the broad definition that we have here in the United States. As Warren said, we were especially successful in gaining provisions that will not require the United States to change our basic nuclear law.

Ratification of the CSC by the United States and other countries will establish a global regime and, as Warren said, because the United States was such a proponent of the CSC and because so many of the provisions are tailored to meet the needs of the United States, other countries, while they have expressed support or interest in the CSC, have made it clear that they expect the United States to take the lead in ratifying this convention.

A global regime will have many benefits for the U.S. Among them is that it will facilitate efforts by the Department of Energy and other U.S. agencies to use U.S. nuclear suppliers in nuclear projects overseas to promote important national objectives. It also will allow nuclear suppliers to compete for the growing market in other countries, and this will have a number of beneficial effects. It certainly will increase jobs here in the United States, it will help the balance of payments, and it will help maintain our nuclear infrastructure. It will allow our nuclear suppliers to continue to be leaders in technology. It will provide incentives for students to pursue degrees in nuclear technology, things which are ongoing problems today.

I think the other main point is, while there will be no need for any change in our basic nuclear law, there is a need for implementing legislation that will coordinate how the United States—as Warren said, the convention provides for an international fund to provide supplementary compensation in the event of a nuclear accident. That fund is made up of contributions from member countries. There is a need to provide for how the United States will make its contribution.

In June of 2004, former Secretary Abraham submitted legislation for the administration that provides for how this contribution will be paid for. In the first instance, it is the obligation of the United States. The implementing legislation provides that where the Price-Anderson Act covers that situation that we will use that existing mechanism to fund the U.S. contribution in a manner that imposes no additional burdens on U.S. industry that contributes to Price-Anderson and in fact increases by a slight amount the amount of compensation that is available to cover damage from an accident.

For situations outside the United States that are not covered by Price-Anderson, the proposed legislation basically provides that those U.S. nuclear suppliers who benefit from this regime will pay for it, will reimburse the U.S. for our contribution to the international fund. That mechanism would come into play only if the United States had to make a contribution and it would be—the legislation provides for the Department of Energy to adopt regulations on how that contribution would be allocated among U.S. nuclear suppliers on the basis of their potential risk.

I will be happy to answer any questions. Thank you.

[Mr. McRae's prepared statement follows:]

PREPARED STATEMENT OF JAMES BENNETT MCRAE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I appreciate this opportunity to testify before you to discuss the reasons for ratifying the Convention on Supplementary Compensation for Nuclear Damage (CSC).

By way of background, in the early 1990's, concerns over nuclear liability were hindering many important United States initiatives to promote nuclear safety and

nuclear non-proliferation. Specifically, in the aftermath of Chernobyl and Bophal, U.S. suppliers of goods and services to nuclear projects were becoming increasingly reluctant to provide goods and services to nuclear projects outside the United States. After considering various options to deal with concerns over nuclear liability, the United States concluded that a global nuclear liability regime was the best solution to these concerns. This conclusion continues to be valid. Over the years, much important work has been delayed or left undone. In many cases, the Department of Energy has been able to secure the assistance of U. S. firms only by extending an unlimited indemnification to them under Public Law 85–804. In some cases, it has been necessary to negotiate liability agreements with the country where work is being undertaken. Earlier this year, the U.S. and Russian Committees on Strengthening U.S.-Russian Cooperation on Nuclear Nonproliferation of the U.S. and Russian National Academies issued a joint report, entitled Strengthening US Russian Cooperation on Nuclear Nonproliferation, that stresses the need to attach very high priority to solving the nuclear liability problem and recommends that the governments of the United States and Russia adopt and ratify the CSC as the long-term and comprehensive solution.

In 1997, after more than five years of negotiations in which the United States played the leading role, a Diplomatic Conference adopted the CSC. Ratification of the CSC by the United States and a number of other countries and its entry into force will create a global nuclear liability regime. However, both because the United States has been the primary proponent of the CSC and because the CSC contains a number of provisions specifically tailored for the United States, most countries expect the United States to take the lead in ratifying the CSC before they will act.

The CSC has two primary elements. These elements will benefit both potential victims by assuring the availability of substantial compensation without protracted litigation and U. S. nuclear suppliers by defining their potential liability exposure.

The CSC utilizes two mechanisms to assure the availability of substantial funds to compensate victims in the event of a nuclear incident Specifically, the national law of each member country must guarantee the availability of at least 300 million Special Drawing Rights (SDRs) (approximately $450 million) to compensate victims for nuclear damage resulting from a nuclear incident. In addition, the CSC creates an international fund to supplement the compensation available under national law. While the amount of the international fund will be dependent on the actual generating capacity of nuclear powerplants in the Contracting Parties, it is reasonable to expect the fund eventually to exceed 300 million SDR's. For comparison purposes, the recently enacted Energy Policy Act established a $500 million limit on liability for nuclear damage resulting from a nuclear incident outside the United States that is covered by the Price-Anderson Act.

The CSC defines potential liability exposure by requiring the national laws of the Contracting Parties to incorporate certain basic principles of nuclear liability law that have been developed in the United States and other nuclear countries over the past half century. These principles include: (1) making operators of nuclear facilities exclusively liable for nuclear damage; (2) imposing strict liability and thereby eliminating protracted litigation over fault or negligence; (3) consolidating all claims in a single forum with the focus on expedited compensation of victims; and (4) prohibiting discrimination among victims on the basis of nationality, domicile, or residence. Unlike other international nuclear liability conventions, the CSC contains an explicit provision that permits the United States to become a CSC party while maintaining the manner in which our national law currently implements these principles with respect to nuclear incidents within the United States, as well as nuclear incidents outside the United States that are subject to the Price-Anderson Act.

Ratification of the CSC by the United States and other countries and establishment of a global nuclear liability regime will yield a number of benefits.

First, the CSC will address the liability concerns of U. S. firms in many cases where the United States seeks to utilize these firms in nuclear projects around the world to promote important national objectives.

Second, the CSC also will address the liability concerns of U. S. firms with respect to commercial nuclear projects outside the United States. These concerns have placed United States firms at a competitive disadvantage. Eliminating this disadvantage will promote several important U.S. national interests. Where a U. S. firm is the exporter of nuclear goods or services, the requirements of U.S. law and agreements for cooperation between the United States and the recipient country give the United States some control over the recipient country's use of the source technology and equipment provided. Also, U.S. nuclear exports inevitably improve safety conditions in countries of concern when state-of-the-art U.S. safety assistance programs are deployed there.

Increasing nuclear exports will help the U.S. balance of trade and create jobs in the United States. Around the world today, 30 nuclear power plants are currently under construction. Additionally, 14 countries have announced plans to start construction of considerably more new nuclear power plants by the year 2025. U.S. nuclear suppliers most likely would provide goods and services to many of these new plants if they could compete on a level playing field.

Nuclear exports also help to preserve the U.S. nuclear infrastructure. The potential for providing goods and services to nuclear projects outside the United States contributes significantly to the business case for continuing nuclear business activities, maintaining technological leadership, and for students pursuing nuclear degrees.

While no change in how our national law deals with nuclear incidents within the United States is necessary, there is a need to clarify the interaction between the operation of the Price-Anderson Act and the international fund established by the CSC, including how the contribution by the United States to the fund will ultimately be paid. The administration has provided proposed legislation on this matter that can be summarized as follows.

The proposed legislation provides that if a nuclear incident is covered by the Price-Anderson Act, then a portion of the funds made available for public liability under the Price-Anderson Act will be used to cover the contribution by the United States to the international fund established by the Convention. The use of Price-Anderson funds to cover the contribution by the United States to the international fund will not decrease the funds available to compensate nuclear damage since the United States will receive a corresponding amount as part of the funds distributed from the international fund. The contribution by the United States to the international fund and the distribution from the international fund of a corresponding amount will offset each other. In addition, the remaining portion of the distribution from the international fund, which comes from contributions by countries other than the United States, will result in a net increase in the amount of compensation available to pay persons indemnified under the Price-Anderson Act. The proposed legislation takes this net increase into account by increasing the limit on public liability under the Price-Anderson Act by the amount received from the international fund which comes from countries other than the United States.

The following example illustrates how the proposed legislation will operate. For this example, assume: (1) the limitation on public liability established pursuant the Price-Anderson Act is $10 billion; (2) there are 100 powerplants covered by the Price-Anderson system; (3) the operator of each powerplant must contribute $100 million to the Price-Anderson system if legal liability reaches $10 billion; (4) 1 SDR (special drawing right) equals $1.50; (5) the contribution by the United States to the international fund is $100 million; (6) the payment to the United States from the international fund is $300 million; and (7) there is a nuclear incident at a domestic nuclear power plant resulting in damage that exceeds $10 billion. Under these assumptions, the Price-Anderson Act would use funds from operators to indemnify legal liability resulting from the nuclear incident until legal liability reached $450 million (300 special drawing rights *X* $1.50). At this point, the United States would use the next $100 million of funds from operators to cover the United States contribution to the international fund. At the same time, the United States would receive a payment of $300 million from the international fund. This payment from the international fund would be. used to indemnify legal liability between $450 million and $750 million. In addition, the limitation on public liability would be increased by $200 million (that is, by the portion of the payment that comes from contributions from countries other than the United States). When legal liability reached $750 million, operators would resume making funds available through the Price-Anderson system to cover legal liability and would continue to do so until legal liability reached the limit $10.2 billion. Under this example, an additional $200 million would be available to indemnify legal liability resulting from a nuclear incident covered by the Price-Anderson Act, at no additional costs to power plant operators. In fact, the retrospective premium imposed on an operator would be slightly lower with respect to nuclear incidents with aggregate damage between approximately $450 million and the increased limit on public liability.

With respect to a nuclear incident outside the United States that is not covered by the Price-Anderson Act, the proposed legislation requires nuclear suppliers to participate in a retrospective program to cover the cost of the contribution by the United States to the international fund. This program is based on the retrospective pooling arrangement established by the Price-Anderson Act which provides a nuclear power plant operator with insurance for potential liability resulting from a nuclear incident at its power plant and which determines the premium for this insurance retrospective after a nuclear incident occurs by allocating the amount of the

aggregate legal liability actually resulting from the nuclear incident among all nuclear power plant operators without regard to whether an operator has any liability for the nuclear incident. The retrospective program, in effect, provides for the collection of an insurance premium from nuclear suppliers for the protection that the CSC gives them against potential liability resulting from a nuclear incident outside the United States that is not covered by the Price-Anderson Act. The proposed legislation thus recognizes that nuclear suppliers are the primary beneficiaries of the CSC and makes them responsible for ultimately paying for the contingent cost to the United States associated with the international fund.

The amount of the premium collected from a nuclear supplier will be determined retrospectively after a nuclear incident occurs by allocating the amount of the contribution by the United States to the international fund among nuclear suppliers without regard to whether the nuclear supplier has any liability for the nuclear incident. A nuclear supplier will not be required to pay its portion of the premium established by the retrospective program unless and until the United States must make a contribution to the international fund established by the CSC. The portion of the premium allocated to a nuclear supplier will reflect the risk from which the nuclear supplier is relieved relative to other nuclear suppliers by participation by the United States in the global nuclear liability regime established by the CSC. The proposed legislation requires the Secretary of Energy to determine by rulemaking the formula for allocating the amount of the contribution by the United States to the international fund among nuclear suppliers. The proposed legislation specifies certain risk factors the Secretary must take into account in determining the formula. These. risk factors focus on the extent of the potential liability of a nuclear supplier that could result from its activities relative to other nuclear suppliers. The proposed legislation also lists certain factors that can provide a basis to exclude certain nuclear suppliers that do not provide goods or services specifically for nuclear facilities or that do not engage in activities likely to result in significant potential liability or that engage in such activities to only a minor extent.

The proposed legislation sets forth the procedure for the Secretary of Energy and nuclear suppliers to follow in the event of a call for funds under the CSC so that payments by the suppliers are made to the Treasury of the United States and conveyed from the Treasury to the appropriate entity in fulfillment of the obligation of the United States to contribute to the international fund established by the CSC. In the event a nuclear supplier defaults on its obligation to make a payment, the proposed legislation authorizes the Secretary of Energy to seek recovery from the supplier of the payment, appropriate interest and civil penalties up to twice the amount of the payment.

In conclusion, I thank you for this opportunity to speak in support of the CSC and I urge you to act expeditiously in giving your advice and consent to the ratification of the CSC.

The CHAIRMAN. Well, thank you both very much.

I will raise the question and one or either of you may want to respond. First of all, the primary aim, as you pointed out, and principal benefit of the CSC would be for U.S. civil nuclear technology exporters, and we would have the establishment of a common international liability to better assure that market. Could you explain how the current international liability picture limits now or hinders United States exporters?

Mr. STERN. I think probably the best way to work this is if I could give a brief introduction and then Mr. McRae could perhaps correct what I say incorrectly.

The CHAIRMAN. Very well.

Mr. STERN. Right now nuclear exporters feel that they are greatly disadvantaged because of liability concerns. This is not true, for example, for European exporters. In essence, if we create a global liability regime we will all be competing on the same basis and that is in fact what the CSC would do.

Mr. MCRAE. The concerns about liability are varied. They relate—and I will go through them and I think the CSC addresses all of them. When a company is considering whether or not to undertake a nuclear project in another country, they assess their na-

tional laws. They like to see a national law that is similar to Price-Anderson and that which exists in Western Europe, where liability is channeled to the operator, where there is a predictable process that allows those who might be affected by an accident to know that there will be compensation available without protracted litigation. My understanding is that they usually insist on such a structure before they will consider pursuing projects there.

They also have concerns about what courts will have jurisdiction. While there has only been one accident, Chernobyl, that actually had trans-boundary damage, there is that potential and the concern would be that there could be multiple forums for lawsuits and that again the normal rule would be that the court in the country where an accident occurred should have jurisdiction. That is usually the case, even with U.S. courts. Where it might come into question is if there is the perception or the reality that there is not an adequate remedy in the country where the accident occurred.

The CSC addresses that by giving exclusive jurisdiction to the courts where a country—where an accident occurs, and also by providing that there will be an adequate remedy, that there will be substantial compensation, and that there will be rules that allow victims to get compensation quickly and without litigating questions like fault or negligence.

The CHAIRMAN. Thank you.

My second question really has to do with the potential export opportunities that might be available. I am not asking the two of you for a market analysis of all those, but from personal experience—yesterday I addressed a large group of people who are discussing the issues pertaining to Ukraine. These were both people from Ukraine as well as Americans. The Chernobyl situation which you mentioned in your testimony today arose, but likewise the tremendous dependence that Ukraine has on other countries for its energy resources now, even to the point of severe debilitation of the economy if things were to go poorly. So obviously an interest again, even despite the tragedy, in more successful and safer nuclear energy resources.

So we were talking in practical terms about one potential market. However, even there conceivably American suppliers might feel constrained, as you say, if they do not see a law similar to Price-Anderson or other favorable aspects to this. Can you give us any idea how large of a market we are talking about, how important this might be to that segment of American business that is involved in this sort of nuclear technology production?

Mr. MCRAE. I can try, Mr. Chairman. I think there are probably I think around 20, 25 nuclear projects currently under way outside the United States. I have seen estimates that, oh, 14, 15 countries may be considering initiating nuclear projects within the next 20 years, and that the numbers that they are talking about, it is a range, but I have seen estimates of between 25 and 75 additional nuclear power plants.

So I think we could say somewhere between 50 and 100 new plants in the next 20 years. Given the fact that U.S. suppliers have some of the leading technology, we have three of the designs, I think, three lightwater reactors, that it is reasonable to expect that

if they are allowed to compete they will be able to secure a fair amount of that market.

Mr. STERN. If I could just add, Mr. Chairman. It is not only a matter of new reactors, of course. There are a large number of reactors that currently exist that were built with U.S. technology, that will or have been relicensed for another 20 or 30 years, that will need U.S. technology and equipment. So there is both a nuclear—there is an economic benefit to the exporters that work on these facilities as well as a nuclear safety benefit in terms of ensuring that those operators have access to the best technology available, American technology.

The CHAIRMAN. The CSC could be a foundation for a new global legal regime governing civil nuclear liability since it would link states that are already parties to existing liability treaties and those states not party to any civil nuclear liability regime. The United States, Canada, Japan, Russia, and South Korea are currently not party to any international liability regime. Aside from the United States, none of these states has signed the CSC.

What efforts is the administration undertaking to ensure that those countries sign and become parties to the CSC and do you have any information that those countries are waiting on United States ratification to act similarly?

Mr. STERN. I appreciate the question, Mr. Chairman. Yes, we have raised the CSC a number of times with the countries you have listed, in particular Korea and Japan and Canada. The message that comes back loud and strong is in fact the message I tried to bring to the table in my initial testimony, that: America, this is your treaty regime; it was created for you and by you; we are not going to move until you move. So we are of course trying to move, so we can press even harder on those countries and others to sign and ratify the CSC.

The CHAIRMAN. How likely is it that nations that are now parties to other international instruments governing civil nuclear liability, such as the Paris Convention on Third Party Liability in the field of nuclear energy, or the Vienna Convention on Civil Liability for Nuclear Damage, will accede to the CSC? If the United States were to ratify the CSC, what steps would the administration take to encourage such countries to join?

Mr. STERN. It is difficult for me, Mr. Chairman, to talk in terms of probabilities, but I believe that once the countries who are party to the Vienna Convention and the Paris Convention see that the CSC gains momentum, in particular as we gain the participation of states that are now not party to any treaty regime, Canada and several Asian countries, the countries who are party to Vienna and Paris will see the benefit, the very large benefit, in creating what is a truly global regime, because the regime that exists now cannot by its terms be global.

Mr. MCRAE. Mr. Chairman, if I could add to that.

The CHAIRMAN. Yes, Mr. McRae.

Mr. MCRAE. During the negotiation of the CSC, we were mindful of the need to include the Paris countries and the Vienna countries, and we were quite careful to make it clear that, just as the United States would be able to join the CSC without joining our national—without changing our national law, we set it up so that those coun-

tries which were already party to the Paris Convention or the Vienna Convention would be able to join the CSC without changing their national law or without any fundamental changes in their existing treaty relations.

As far as outreach, we have been very active with encouraging and having the International Atomic Energy Agency set up a group called INLEX to promote the CSC. That group has produced a commentary that is being made available on how the CSC operates, that will be given to member countries. They have set up a series of workshops, I think the first of which is going to be in Australia this December, and then I think I may be attending that to describe the CSC. There should be one early next year in Latin America.

We have also been active at the Nuclear Energy Agency and their liability group. We worked with them when the Paris countries were revising Paris and the companion Brussels Convention to make sure that they had provisions that would make them compatible with the Paris countries joining the CSC.

Thank you.

The CHAIRMAN. The letter of submittal states that there could be a positive benefit to United States commercial nuclear suppliers since the limitation on liability in the CSC would extend to suits filed in United States courts. Does this in effect limit the right of U.S. persons to bring suit against entities or companies in the United States courts or against U.S. companies for accidents overseas? Are there any other international agreements to which the United States is currently a party that similarly limit the rights of U.S. persons?

Mr. STERN. Mr. Chairman, the short answer is yes, the treaty could limit the rights of U.S. citizens to sue in U.S. courts. The general rule under the CSC is, vis a vis courts of other parties, only the courts of the parties within the incident, within the state in which the incident occurs, should have jurisdiction. As a practical matter, in today's legal framework, where there is no CSC, we would expect that if a nuclear incident occurs overseas U.S. courts would assert jurisdiction over a claim only if they concluded that no adequate remedy exists in the court of the country where the accident occurred.

The CSC would create a regime where an adequate remedy exists. So the answer to your question, Mr. Senator, Mr. Chairman, is yes.

In terms of other precedents, we did a brief search and were not able to find a good precedent for this.

The CHAIRMAN. Do you have a comment, Mr. McRae?

Mr. MCRAE. If I could add, the simple answer is that it does limit jurisdiction. But there is one area where it actually will make clear that U.S. courts have exclusive jurisdiction where now there is a fair amount of confusion, and that would be with respect to accidents in our exclusive economic zone. There the convention gives exclusive jurisdiction to U.S. courts over maritime accidents, as well as maritime accidents where the United States would be responsible for the operator of the ship.

So there are situations where in fact the jurisdiction of U.S. courts is made clear and exclusive under the CSC.

The CHAIRMAN. The letter of submittal states that the United States may become a party to the CSC, quote, "without substantive change to the Price-Anderson system," end of quote, the primary legislation that currently covers civil nuclear liability in the United States. Could you both summarize the changes that will be made to Price-Anderson under the administration's proposed implementing legislation?

Mr. STERN. Ben can correct me if I am wrong, but I believe that the only change that would have been required was in fact made when the Price-Anderson Act was extended a few months ago. The other legislation that is needed, which is not and does not affect the Price-Anderson legislation, is that which is necessary to create the funds for U.S. contribution to the supplementary fund. Ben I think provided a brief description of that before and can go into greater detail if that is your desire.

Mr. MCRAE. Mr. Chairman, Warren is right that the recent Energy Policy Act made the only change that was necessary to Price-Anderson, which was to increase the liability amount for nuclear accidents outside the United States from $100 million to $500 million.

I would request that the section by section that the administration provided in connection with our proposed legislation be incorporated into the record. It gives a detailed discussion of the proposed legislation. I will again just summarize that the intent in the proposed legislation was to make sure that there was no—that in making the U.S. contribution to the international fund that we take advantage of Price-Anderson's collection of funds to pay for the U.S. contribution without increasing the burden on taxpayers or on U.S. nuclear operators and at the same time have a mechanism so that we ensure that the amount of compensation available for an accident would be no less and in fact slightly higher.

The CHAIRMAN. Your request for submission of that additional information is granted. It will be made a part of the record at the appropriate point.

Yes, Mr. Stern.

Mr. STERN. If I could add, Mr. Chairman, we will do an additional search to see if we can find relevant treaties that could provide a precedent for this and we will supply that information to you.

The CHAIRMAN. That would be very helpful if you would supplement the record with that research.

[The information referred to follows:]

We have conducted research to find an example of a relevant treaty to which the Senate has given advice and consent to ratification, where citizens of the United States are limited in their ability to seek legal recourse in U.S. courts for damage or injury sustained abroad. One example of such a treaty is the Convention for the Unification of Certain Rules Related to International Transportation by Air, done at Warsaw, October 12, 1929 (the "Warsaw Convention"), and to which the Senate gave advice and consent on June 15, 1934.

Article 28, paragraph 1, of the Warsaw Convention states,

> (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

The Warsaw Convention has been superseded by the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (the "Montreal Convention"), as among parties to the Warsaw Convention that are now parties to the Montreal Convention. The Senate gave its advice and consent to the Montreal Convention on July 31, 2003. Article 33 of the Montreal Convention, entitled "Jurisdiction," states,

> (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.
>
> (2) In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

While other precedents may exist, we note that the example cited above relates to a significant, longstanding treaty that has been open to judicial scrutiny.

Mr. STERN. Thank you.

The CHAIRMAN. Now, you have touched upon the answer to this question, but let me just raise it specifically, the administration's proposed implementing legislation requiring United States nuclear suppliers to pay the U.S. share of any supplementary compensation under the convention for nuclear incidents not covered by the Price-Anderson Act. Have you had any comment from industry regarding their views on this provision?

Mr. STERN. Our general impression, not surprisingly, is that they would rather not contribute in this way. Yes, we have discussed this with them.

The CHAIRMAN. But nevertheless you intend to propose implementing legislation that would require that they pay these shares?

Mr. STERN. Yes. The primary beneficiaries of the CSC are in fact the suppliers. It is the administration's view that the costs, if any, should not fall on the general taxpayer, but rather those that benefit directly by the treaty.

The CHAIRMAN. Do you have any further comment, Mr. McRae?

Mr. MCRAE. Only to add that we were sensitive to the U.S. industry on this issue and that following the diplomatic conference and signing the CSC the U.S., the State Department and Department of Energy, had numerous discussions with representatives of the industry about what might be an acceptable formula. I am not going to say that they want to pay, but we certainly listened to many of their concerns and in developing our proposal we took as much of that into account, in the sense of trying to make sure that payments would only occur in the unlikely event that we were to make a contribution, and that we tried to come up with a formula on allocating risk which is similar to that which I understand is already used in the insurance industry to allocate risk when there are multiple companies involved in a nuclear project.

The CHAIRMAN. Under the CSC, nuclear operators would be held liable for damage caused by nuclear incidents at the nuclear installations they operate. Would an operator have any defense to liabil-

ity? Would an operator have any right to recover from third parties who might be at fault? How does this compare to the existing United States regime under the Price-Anderson Act?

Mr. MCRAE. Under the convention there are provisions that provide the operator with a right of recourse. They are both subject to national law. So in the case of the United States there would be no right of recourse because that is not allowed under Price-Anderson. In other countries, national law could permit two situations for right of recourse. One would be against a person who intentionally causes a nuclear accident. The other would be where an operator and a contractor agreed by contract for some type of right of recourse or some kind of mechanism in the event of an accident. Those are the same provisions that are in the existing international conventions on liability.

The CHAIRMAN. Thank you.

What are the implications for the United States share of the supplemental compensation fund and the overall amount of that fund if the convention enters into force with only a small number of countries with nuclear installations?

Mr. STERN. Mr. Chairman, if all major nuclear generators were in fact parties and the treaty were in force, the international fund would be roughly 300 SDRs, which translates into approximately 450 million U.S. dollars. Of that, the U.S. would be obligated to contribute approximately $150 million. There is a complicated formula as parties join, but in general if a smaller number of countries are in fact parties the fund would be smaller and the U.S. contribution would be smaller. There is a cap of I think, I believe, 30 percent for the U.S. contribution.

The CHAIRMAN. Do you have a further comment, Mr. McRae?

Mr. MCRAE. It is a complicated formula, but we were very sensitive to the fact that the United States might be in a situation at the beginning of the process where we would be the major contributor and we were mindful that there needed to be limits and, as a practical matter, the United States will never pay more than around 30 percent. As it matures, the amount will be less than that. But at no point will it be more than about a third.

The CHAIRMAN. Thank you.

When transmitting the convention to the Senate, the administration recommended that the Senate include in its resolution of ratification a reservation to this convention relating to dispute resolution. Is this still the administration's position?

Mr. STERN. Yes, Mr. Chairman.

The CHAIRMAN. You would agree?

Mr. MCRAE. Yes.

The CHAIRMAN. Very well.

Gentlemen, I appreciate your thoughtful answers to each of these questions, which will once again make the strong record of a hearing on this important treaty.

Let me just ask any of the four of you if you have any final comments or words of wisdom that would further complete our record, because if not I am prepared to thank you and adjourn the hearing. Yes, Secretary Balton?

Mr. BALTON. Thank you, Mr. Chairman. I should say two things: first, to express our appreciation to you and other members of the

committee and the staff for their willingness to take up the four treaties related to the oceans. I am sure my colleagues would say the same with respect to the nuclear liability convention.

I had thought in the course of questions and answers I would have a chance to say this. I did not, so I should say it now. All four of the oceans-related treaties are built on and add to the framework created by the 1982 United States Convention on the Law of the Sea and it still remains the administration's position that we seek U.S. accession to that treaty as well at the earliest possible time.

Thank you.

The CHAIRMAN. I thank you for that comment, and I cannot emphasize how important administration leadership and support will be in this issue. It is not a new issue before the committee, but, as you recall, we have taken action with enthusiasm, unanimously attempted to work with our colleagues to gain some floor time in a practical way, and have not yet been successful.

But to the extent that the Departments that are here represented can weigh in with some of our colleagues as well as the general public, that will be helpful. I agree it is a very important part of the consideration of the oceans and the fisheries that we have discussed today.

Well, I thank you very much for your testimony and we look forward in the committee to taking action on the treaties at an early time when we can get a quorum of our members for a business meeting.

Let me just say, the committee has a number of further questions for you as witnesses. Members who were not able to attend the hearing today have requested some additional time to review what we have asked and your responses, and then they may be submitting questions for the record. We will ask you to answer the questions promptly, and following completion of the record we will have our business meeting consideration.

Thank you all and the hearing is adjourned.

[Whereupon, at 10:55 a.m., the committee was adjourned.]

APPENDIX

Responses to Additional Questions Submitted for the Record by Members of the Committee

RESPONSES TO ADDITIONAL QUESTIONS RELATING TO THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF THE HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN (TREATY DOC. 109–1)

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR RICHARD G. LUGAR

Question. The next meeting of the WCPF Commission is to take place in December 2005. What issues is the Commission expected to address at this meeting? Will the United States Delegation to the meeting include representatives of interested U.S. territories?

Answer. The Commission is expected to consider the following issues at the December 2005 meeting: conservation and management measures for bigeye and yellowfin tunas; a limit on further increases in fishing effort on northern albacore; a shark-finning prohibition similar to those adopted by management organizations in the Atlantic (by ICCAT) and in Eastern Pacific (by IATTC); measures to mitigate the bycatch and mortality of sea turtles in Pacific longline fisheries; cooperation with Inter-American Tropical Tuna Commission on shared fish stocks; and efforts to address the continuing increase in fishing capacity, among others. The meeting will also be held in conjunction with the first meeting of the Commission's Technical and Compliance Committee. That committee will consider a range of issues related to monitoring, control and surveillance such as observer programs, vessel monitoring systems, port state measures, and high sea boarding and inspection, among others.

As has been the case at every negotiating session and every session of the Preparatory Conference and the Commission, all interested U.S. territories are invited to send a representative to participate on the U.S. delegation.

Question. Article 25(11) of the Convention allows WCPF Commission members to take action "in accordance with the Agreement and international law, including through procedures adopted by the Commission for this purpose" against vessels that have engaged in activities that undermine or violate the measures adopted by the Commission to deter such vessels from fishing in the Convention Area until their flag State takes appropriate action. What type of action might the United States or another member pursue against a foreign-flag vessel under this provision?

Answer. There are various tools consistent with the Agreement and international law that could be used to prevent and deter fishing that undermines or violate the Commission's rules. Vessels operating in the Convention Area in waters under the jurisdiction of a coastal State are subject to boarding and inspection by that state and subject to the rules, laws and regulations such State may put in place to enforce the Commission's management measures. Vessels found to have violated such measures could face seizure of the vessel or catch and the application of other appropriate sanctions and penalties.

There are also measures that can be applied to vessels of Parties to the Convention fishing outside the jurisdiction on any country; i.e., on the high seas. Such vessels are subject to reporting requirements, use of vessels monitoring systems and even boarding and inspection on the high seas by other members of the Commission. When infractions are identified, the first line of defense is action by the flag state. If the flag state is unable or unwilling to take action, other measures that could be applied by the United States and other countries include denial of port access, and trade measures to prevent the fish caught by that vessel from entering into international commerce, as described below.

Port States may also take a variety of steps with respect to foreign vessels that have come to their ports, e.g., to land or transship fish. For example, port States may require such a vessel to submit information about the vessel and its catch in advance of arrival. The port State may also inspect the vessel while in port. If evidence of a violation is found, the port State may take a number of additional steps, depending on the circumstances. At a minimum, the port State could refuse to allow the vessel to land or transship its catch and could forward evidence of the violation to the flag State.

States that import fish from fisheries regulated by the Commission may also take certain steps. In 2001, the Food and Agriculture Organization adopted by consensus the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. This IPOA calls for States to use certain "multilateral market measures," consistent with international law, to prevent illegally harvested fish from entering their markets. A number of other regional fisheries management organizations, including ICCAT, have already put in place such multilateral market measures. The WCPF Commission is likely to consider similar schemes in the near future.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR JOSEPH R. BIDEN, JR.

Question. Please describe the anticipated regulatory framework under U.S. law for the implementation of the conservation and management measures required under the Convention. How will it relate to current regulation of any species found in U.S. jurisdiction (i.e., territorial waters or the EEZ) under the Magnuson-Stevens Act? Further, Article 8 requires compatibility between conservation and management measures established for the high seas and those adopted for areas under national jurisdiction. Please describe how this will be assured under U.S. law and regulation.

Answer. The administration is currently preparing proposed legislation to implement the WCPF Convention. If such legislation, once passed, follows the precedents implementing other such Conventions, it would authorize the Secretary of Commerce to administer, implement and enforce all the provisions of such legislation and regulations issued pursuant thereto, in consultation with other appropriate agencies and Departments. Measures with respect to fisheries currently managed under the Magnuson-Stevens Act would also require coordination with the respective regional fishery management council or councils. Further, the administration's draft legislation would provide for the Secretary to ensure, to the extent practicable, consistency between fishery conservation and management programs administered under that legislation with the Magnuson-Stevens Act and other legislation, including the Tuna Conventions Act, the South Pacific Tuna Act, Pacific Albacore legislation and the Atlantic Tunas Convention Act.

It should be noted that Article 8 applies to the Commission. Thus, Article 8 addresses the responsibility of the Commission, rather than individual States, regarding compatibility between measures adopted for the high seas and those adopted for areas under national jurisdiction. The premise of this international regime is to manage the affected fish stocks throughout their range, which includes areas under national jurisdiction and the high seas. The Convention specifies that the area of application of any measure shall be determined at the time the measure is adopted. For its part, we expect that the U.S. delegations to these meetings, working in concert with other like-minded delegations, will work to ensure that measures adopted by the Commission do not make artificial distinctions or create incompatibility between such areas. Such measures, once adopted, would then be implemented by the United States under the scheme described in the preceding paragraph.

Question. Article 8(2)(b)(ii) requires the Commission to take into account "previously agreed measures established and applied in respect of the same stocks for the high seas which form part of the Convention Area by relevant coastal States and States fishing on the high seas in accordance with the 1982 Convention and the Agreement." Please summarize any such "previously agreed measures."

Answer. There are a number of such previously agreed measures. As far as the United States is concerned, such measures flow from the Multilateral Treaty on Fisheries between the Pacific Island States and the United States. Under that Treaty, U.S. vessels are subject to a range of reporting and operational requirements. These include requirements to: have a proper license issued annually by the Forum Fisheries Agency (FFA); report catches and position on a weekly basis; report when entering or exiting the waters under the jurisdiction of any Party to the Treaty; notify in advance when planning to enter a port for the purpose of unloading catch;

carry an observer when requested by the FFA; and have on board and active a vessel monitoring system at all times in the Treaty licensing area. As far as other countries are concerned, their vessels are subject to similar requirements under bilateral agreements with various Pacific Island States. The provisions of Art. 8(2)(b)(ii) are intended to help ensure that requirements adopted under the WCPF Convention are not inconsistent with these requirements and do not impose either duplicate or conflicting obligations and requirements on fishing vessels in the region.

Question. What is the anticipated U.S. share of the Commission budget?

Answer. The notional scheme of contributions is based on a variety of factors, the most significant of which are level of development and level of fish catches in the region. Based on the current level of U.S. catches, the United States share is projected at approximately 12 percent of the budget. The Commission's budget for the first year is approximately $970,000, of which the U.S. share would be approximately $116,000. As the Commission builds its staff and operational capacity, the budget and the U.S. contribution will grow, but the relative share paid by the United States will remain constant.

RESPONSES TO ADDITIONAL QUESTIONS RELATING TO THE CONVENTION FOR THE STRENGTHENING ON THE INTER-AMERICAN TROPICAL TUNA COMMISSION (TREATY DOC. 109–2)

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR RICHARD G. LUGAR

Question. At the hearing, you indicated that the Executive Branch will soon propose implementing legislation for this convention in the form of amendments to the Tuna Conventions Act of 1950, which implements the 1949 Convention that established the Inter-American Tropical Tuna Commission. Please explain what type of amendments would be needed in order for the United States to fully comply with the new convention. Are any new authorities required for this purpose?

Answer. No new authorities are required in order to implement the Antigua Convention. Nonetheless, the administration believes that some modification to the current implementing legislation (the Tuna Conventions Act of 1950) is warranted and is currently preparing draft legislation to this effect. In particular, we believe some changes are advisable to reflect the fact that, under the Antigua Convention, the IATTC will take decisions rather than make recommendations, as under the 1949 Convention. Other changes being considered are to remove references in the Tunas Convention Act to a second Convention, "the International Commission for the Scientific Investigation of Tunas" (the Commission, included in the 1949 Act, never came into existence) and to update the enforcement and penalties sections to reflect current standards and practice. The general regulatory framework within which the United States implements its obligation under the IATTC would remain in place.

Question. Article VII(i) of the Convention authorizes the Inter-American Tropical Tuna Commission (IATTC) to "establish a comprehensive program for data collection and monitoring which shall include such elements as the Commission determines necessary." What type of data collection and monitoring measures were adopted by the Commission under the 1949 Convention? Are any changes expected in this area under the new Convention? The Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which the Senate is also considering, would authorize a regional observer program and require the use of near real-time satellite position-fixing transmitters. Do you anticipate that the IATTC will adopt similar measures? Why or why not?

Answer. The provisions of Article VII(i) are intended to provide the legal basis for, and thus strengthen, the Commission's program of data collection and analysis. The Commission utilizes the international observer program established under the Agreement on the International Dolphin Conservation Program. This program requires 100 percent observer coverage on all large-scale purse seine vessels operating in the convention area. The international observer program provides that national observers from AIDCP Parties may cover up to 50 percent of the fishing trips by vessels from that nation. Both international and national observer programs operate under the same requirements to collect data on the location, gear configuration and target species of all purse seine sets, and on bycatch and other biological data. IATTC scientific staff conducts random catch sampling and port sampling to collect additional data. In addition, IATTC Members are required to provide data on set

location, gear configuration and target species for all of their vessels, not just purse seine vessels, fishing for species covered by the Convention.

Regarding monitoring, the IATTC recently adopted a resolution requiring the development of a satellite-based vessel monitoring system for all large-scale fishing vessels in the convention area. Also, vessels carrying on-board observers are required to report collected data weekly to the IATTC Secretariat.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR JOSEPH R. BIDEN, JR.

Question. Article V requires compatibility between conservation and management measures established for the high seas and those adopted for areas under national jurisdiction. Please describe how this will be assured under U.S. law and regulation.

Answer. Measures adopted by the IATTC are implemented under U.S. law through regulations promulgated by the National Marine Fisheries Service through authorities derived from the Tuna Conventions Act of 1950 and in part from the Magnuson-Stevens Fishery Conservation and Management Act. While this general legal and regulatory framework would not change in a significant way, the administration is working to prepare proposed amendments to that legislation to ensure consistency with the provisions of the Antigua Convention.

Moreover, the provisions of Article V apply not only to members of the Commission individually, but also to the Commission collectively. As a result, it will also be incumbent upon delegations to the Commission meetings to ensure that the Commission itself does not adopt measures that might create inconsistencies between measures applied on the high seas and in areas under national jurisdiction.

Question. What is the anticipated U.S. share of the Commission budget?

Answer. The U.S. contribution for 2006 is $1.9 million. This level of funding is the result of a multiyear, negotiated effort to reduce the U.S. contribution from its previous level of more than $3.2 million. Previously, the United States was paying $3.2 million of a total IATTC budget of approximately $3.6 million, or almost 90 percent of the total. This year, due both to reductions in the U.S. contribution and increases in contributions by other IATTC members, the U.S. contribution of $1.9 million represents 36 percent of the total IATTC budget of $5.2 million. We anticipate that the U.S. contribution will decrease further, in both real and relative terms, as more countries join the IATTC by ratifying or acceding to the Antigua Convention.

RESPONSES TO ADDITIONAL QUESTIONS RELATING TO MARPOL ANNEX VI (TREATY DOC. 108–7)

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR RICHARD G. LUGAR

Question. The United States has ratified Annexes I, II, III, and V of the MARPOL Convention and the administration is seeking to ratify Annex VI. In the letter of submittal, the administration indicated that it does not intend to seek ratification of Annex IV, which regulates ship-generated sewage. Please explain why. How does Annex IV differ from existing U.S. law?

Answer. The U.S. administration conducted an extensive review of Annex IV between 1999 and 2000 since the IMO's Marine Environment Protection Committee was then considering changes to the Annex. As a result of that review, the United States proposed a series of amendments designed to improve Annex IV and to better align Annex IV with the approach taken under U.S. law. Unfortunately, the changes proposed by the United States were not supported by the committee. Annex IV entered into force on November 27, 2003 and the revised Annex IV subsequently entered into force on August 1, 2005 without any of the changes proposed by the United States.

While existing U.S. law has at least the same effect as Annex IV, Annex IV differs from the approach outlined in U.S. law in three main areas. First, the definition of sewage contained in Annex IV is considerably broader than that found in U.S. law. The MARPOL definition includes drainage from shipboard medical premises, wash tubs, and scuppers located in such premises, as well as drainage from spaces containing live animals. U.S. regulations prohibit commingling of medical waste with sewage on all public and many privately owned vessels. The broader MARPOL definition also presents the significant challenge of processing gray water from shipboard animal spaces through sewage plants on U.S. flag vessels as well as other difficulties in mixing graywater and blackwater discharges.

Second, Annex IV regulates discharges as a function of distance from land with no provisions afforded for the protection of sensitive resources or the establishment of "no-discharge" zones as afforded under U.S. law.

Third, Regulation 12 of the revised Annex IV requires Parties to undertake the provision of adequate reception facilities at ports and terminals for the reception of sewage. While mandatory port reception facilities are a logical requirement under Annexes I, II, V, and VI of MARPOL, the administration believes a requirement for sewage port reception facilities is economically inefficient, since discharge at sea, when properly treated, is an environmentally appropriate solution.

Question. Regulation 17 calls for Parties to Annex VI to provide facilities to receive ozone-depleting substances and solid wastes from exhaust cleaning systems and the implementing legislation the administration submitted to Congress contains provisions requiring such facilities at U.S. ports and terminals. Do any United States ports already have such pollution reception facilities? How many of these reception facilities would have to be constructed in order for the United States to comply with Annex VI? What is the estimated cost of the construction of these facilities?

Answer. The United States currently has federal regulations for the control of ozone-depleting substances. Foreign ships are subject to these requirements when they service equipment or systems that use these substances while they are in the United States. It is not expected that additional reception facilities for ozone-depleting substances will be necessary in the U.S. to meet the requirements of Regulations 12 and 17.

Annex VI permits the use of exhaust gas cleaning systems, for both NO_X and SO_X removal (Regulations 13(3)(b) and 14(4)(b)). In the case of NO_X removal, the Annex VI standards can be achieved through engine-based controls and do not require the use of after-treatment. Selective catalytic reduction units or various water-based (e.g., water emulsification) devices may be fit on a ship for additional NO_X reductions, but these technologies do not result in residues and are therefore unlikely to present a disposal problem that would require reception facilities. In the case of SO_X removal, it is difficult to say at this time what kinds of reception facilities will be required, how many would be needed, or how much they would cost. SO_X exhaust gas cleaning systems for marine applications remain under development. Limited field testing is just beginning and there are currently no commercially manufactured devices available. Once we have a better understanding of what form these devices are likely to take, the nature of their residues, and how much of those residues will be required to be disposed of through port-supplied facilities, we will be in a position to estimate what types of reception facilities will be needed and how much those facilities would cost.

Question. If the United States becomes a party to Annex VI, what are the next steps that the administration would seek in negotiations under the agreement? For instance, would the administration seek more stringent air pollution regulations? How soon would the administration seek to declare certain coastal areas as SO_X Emission Control Areas?

A decision was recently taken by IMO Member States to begin discussions to consider the development of broader and more stringent standards than those currently found in Annex VI. The administration is committed to pursuing at the IMO more stringent standards for NO_X and is carefully considering the feasibility of more stringent sulfur limits applicable in SO_X Emission Control Areas, as well as expanding the Annex to establish standards applicable to existing engines, particulate matter, volatile organic compounds, and non-diesel engines.

EPA is currently conducting studies needed to evaluate the establishment of certain coastal waters as a SO_X Emission Control Area. Should these studies lead to a decision to seek establishment of such an area(s), the administration would need to submit a proposal for consideration under Annex VI of MARPOL. Such a proposal may be submitted to the IMO as early as 2007. Recognizing the time necessary for review at the IMO and the time required for such an amendment to enter-into-force, any North American SO_X Emission Control Area would not be effective until 2009 or later.

Question. On July 11, 2005, several amendments to Annex VI were adopted, including changes to the NO_X Technical Code and a provision establishing the North Sea as a SO_X Emission Control Area (SECA). The administration has indicated that, if the U.S. instrument of ratification for Annex VI were deposited before May, 2006, the United States would be in a position to either accept these amendments or condition its acceptance. What does the administration intend to do with respect to these amendments?

Answer. The administration fully supported development and adoption of these amendments and wishes to see them enter into force for the United States.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO DAVID A. BALTON BY SENATOR JOSEPH R. BIDEN, JR.

Question. Does the Executive Branch have any data on the degree of pollution from ships and the degree to which such pollution affects on-shore air, quality and achievement of Clean Air Act requirements (i.e., National Ambient Air Quality Standards)? Please provide a summary of the degree of this problem.

Answer. Ships that use the marine diesel engines and fuels covered by Annex VI contribute significantly to air pollution in the United States. EPA's Office of Transportation and Air Quality estimates that in 1996 these engines contributed approximately 6%, 6%, and 27%, respectively, of the national mobile source NO_X, PM 2.5, and SO_X inventories. These contributions are expected to increase to 28%, 25%, and 84%, respectively, by 2030, due to increasing trade and the declining contribution of other mobile sources resulting from the use of cleaner fuels and the implementation of EPA's recently adopted emission control programs.

The effects of ship emissions on on-shore air quality can be considerable, particularly because these emissions are concentrated in ports and coastal and river areas. Nearly all of the emissions from U.S. flag vessels, including tugs, ferries, fishing boats, supply boats, and push boats, occur on our rivers and lakes, within our ports, or in close proximity to the U.S. coast. Emissions from foreign-flagged ocean-going vessels also contribute significantly to air quality problems in numerous U.S. ports and coastal areas, many of which are high-density urban areas.

The contributions of marine vessels to local NO_X, PM 2.5, and SO_X emission inventories have an impact on states' ability to achieve National Ambient Air Quality Standards (NAAQS) for ozone and PM. As many as thirty commercial ports are located in areas that have been designated as non-attainment areas under EPA's new 8-hour ozone and fine particulate (PM 2.5) NAAQS. States with non-attainment areas will be required to take action to bring those areas into compliance in the future.

Question. Please provide a summary of the current or contemplated regulatory framework implementing the following provisions of Annex VI: Regulations 12, 13, 14, and 16.

Answer. EPA currently has regulatory programs that control the substances addressed in Regulations 12 (ozone-depleting substances), 13 (NO_X), 14 (SO_X), and 16 (incinerators). Each of these programs was authorized by the Clean Air Act. EPA's program for ozone-depleting substances was promulgated under Title VI of the Clean Air Act, and regulations can be found in 40 CFR 82. The programs for NO_X and SO_X emissions from marine diesel engines and their fuels were promulgated under Title II of the Clean Air and regulations can be found in 40 CFR 94 and 80. The Coast Guard promulgated a notice and comment rule at 46 CFR 63.25–9 to regulate shipboard incinerators on inspected U.S. flagged vessels. This regulation was last amended on December 1, 1999. It incorporates some of the elements within the scope of Annex VI, Regulation 16. The Coast Guard grants type-approvals for incinerators in accordance with this standard. The balance of the elements within the scope of Regulation 16 are addressed by a notice and comment rulemaking that is currently in progress to amend that same regulation. The NPRM for those amendments is the subject of the June 30, 2004 Federal Register entry at 67 FR 39762.

EPA's program for ozone depleting substances is very comprehensive and already applies to ships when systems using these substances are serviced or replaced while the vessel is in U.S. ports or territorial waters. We do not anticipate that major revisions of the national program will be necessary to implement Regulation 12.

EPA's standards for marine diesel engines were adopted in rules finalized in 1999 and 2003. The Annex VI NO_X limits (EPA's Tier 1 standards) were made mandatory for engines above 2.5 1/cyl beginning in 2004. The federal emission limits also include a second tier of standards that apply to engines up to 30 liters per cylinder displacement. In addition to more stringent NO_X limits, these Tier 2 standards include PM, HC, and CO limits. The federal certification and compliance program is very similar to the Annex VI program, although there are some differences regarding liability for in-use compliance, emission system durability, test conditions, test parameters, and witness testing. These requirements are sufficiently consistent with Annex VI and the NO_X Technical Code to allow manufacturers to use a single harmonized compliance strategy to certify under both systems.

EPA's program for marine fuels covers only distillate fuel. Therefore, it will be necessary to develop regulations to implement the requirements of Regulations 14 and 18 with respect to certifying residual fuels and setting out compliance with the requirements by ship owners. Regulations will also be required to implement a SO_X Emission Control Area should such an area be proposed and approved off the North American coast.

Question. Regulation 13 applies to diesel engines which are installed or undergo a major conversion on or after January I, 2000. If the United States becomes a party to Annex VI, will this requirement apply retroactively to engines installed or which were subject to a major conversion between January 1, 2000 and the date of entry into force for the United States?

Answer. The Annex stipulates that the effective date of the NO_X requirements is January 1, 2000. Compliance with the applicable standards should not be a problem; the requirements have been widely known, given that they were adopted in 1997. In addition, marine engine manufacturers have provided IMO compliant engines since January 1, 2000, and most marine classification societies have insisted on compliance with the requirements since that time.

Question. The Secretary's letter of submittal of the treaty notes that the United States "intends to press" the International Maritime Organization to set more stringent NO), emission standards "on an expedited basis." What is the current status of the diplomatic effort to seek such standards?

Answer. The United States is seeking to establish an additional tier of standards under the Annex that will set more stringent limits consistent with recent advances in emission control technology, including after-treatment technology. We will advocate aggressive reductions beyond the existing standards for new engines with per cylinder displacement below 30 liters in line with the controls EPA is considering for a new tier of federal standards for these engines. We will also advocate significant reductions for new engines used for propulsion on ocean-going vessels. Moreover, we will encourage adoption of new controls applicable to existing engines that reflect the appropriate use of emission control technologies that can be applied to these older engines.

Question. The Secretary's letter of submittal states that the United States is "considering whether the Annex VI sulfur oxide limits should be lowered under this Convention, particularly in SO_X Emission Control Areas." What is the current U.S. policy in this regard, and what limits would such policy seek?

Answer. The fuel sulfur content limits in Annex VI are of interest to the United States because the residual fuel used in ocean-going marine engines is an important source of SO_X emissions, which in turn contribute to ambient levels of particulate matter. EPA estimates that, in light of mandated decreases in emissions from other sources, the relative contribution of such sources to overall mobile source SO_X inventories will increase by three to four times by 2030. Many of these emissions affect our port communities and coastal areas and therefore have important public health impacts.

Annex VI limits the sulfur content of marine diesel fuel to 45,000 ppm; the cap in SO_X Emission Control Areas (SECAs) is 15,000 ppm. The current global average fuel sulfur content level is about 27,000 ppm. In comparison, EPA recently finalized fuel sulfur limits of 500 ppm (in 2007) and 15 ppm (in 2012) for marine distillate fuel sold in the United States.The IMO has recently decided to review the Regulation 14 fuel sulfur limits. Currently, U.S. policy is to work within this review group to bring about the adoption of more stringent international standards that will protect human health and the environment. These standards could be achieved either by reducing the sulfur content of fuel or by the use of after-treatment on board vessels. These devices are currently under development by a number of manufacturers, and it is hoped that they will offer a low-cost alternative to very low sulfur residual fuel. These devices may also allow achievement of standards that fuel sulfur controls alone would not permit, since extracting sulfur from residual fuel is complicated and very costly.

Question. In addition to strengthening NO_X, standards, does the United States believe other measures are necessary to strengthen the agreement? If so, why does the Executive Branch propose a declaration focused only on the NO_X emission control limits, and not the need to strengthen other provisions of Annex VI?

Answer. The United States does anticipate that other measures are necessary to strengthen the agreement, in terms of the engine emission standards (to cover more pollutants), the types of engines covered (existing engines and rebuilds), and the fuel standards. The administration proposed a declaration in May 2003 focused on

the NO_X limits because the administration had already concluded that the NO_X emission limits should be lowered in the near future. While we do anticipate the need to strengthen other aspects of the Annex, the administration has not yet reached conclusions on the specific changes that may be appropriate. These negotiating positions will be based on analysis of studies currently underway and will also be influenced by forthcoming discussions yet to be held at the International Maritime Organization.

Question. Similarly, the Executive Branch has proposed an understanding stating that, with respect to emissions of nitrogen oxides pursuant to Regulation 13, the Protocol does not "prohibit parties from imposing more stringent measures than those identified in the Protocol as a condition of entry into their ports or internal waters." Does the same principle apply to other compounds regulated by Annex VI? That is, may parties impose more stringent measures as a condition of port entry or entry into internal waters for sulphur oxides, VOC emissions, shipboard incineration, or fuel oil quality standards? If so, why is the proposed understanding focused only on nitrogen oxides?

Answer. The understanding is focused on NO_X emissions not because that is the only pollutant with respect to which more stringent measures may be applied as a condition of port entry, and the principle does not apply exclusively to NO_X emissions. NO_X is highlighted because it has been the primary focus of U.S. regulatory action and to send a signal internationally of the importance of developing an appropriately stringent standard. Parties are free to impose more stringent measures as a condition of port entry for sulfur oxides, volatile organic compounds (noting the requirement in Regulation 15 of a six-month notice requirement, as explained on page VIII of the Letter of Submittal), shipboard incineration, fuel oil quality, ozone-depleting substances, and NO_X.

Question. Regulation 10 provides a "clear grounds" standard for Inspection of a ship in port or an offshore terminal. How does this standard compare to current Coast Guard authorities for such inspection?

Answer. The Port State Control provisions of Regulation 10 are similar to the corresponding provisions in the other MARPOL Annexes to which the United States is a party. Thus, this "clear grounds" standard is familiar to the Coast Guard and provides a sufficient basis for carrying out an effective Port State Control program.

Question. Will the United States enforce Annex VI against all ships, U.S. and foreign, that come into all of the waters over which the U.S. has jurisdiction—i.e., in ports, in the territorial sea, and in the exclusive economic zone?

Answer. In the draft implementing legislation forwarded to Congress on October 6, 2005, the administration proposed that the United States enforce Annex VI against U.S. ships wherever located, consistent with the existing provisions of the Act to Prevent Pollution from Ships (see 33 U.S.C. § 1902(a)(1)), and against foreign ships to the extent set forth in the proposed implementing legislation.

Question. Does the Executive Branch regard Annex VI as a "generally accepted international rule or standard" as that term is used in Articles 21 and 211 of the UN Convention on the Law of the Sea?

Answer. Whether a particular measure within a treaty is considered a "generally accepted international rule or standard" within the meaning of various provisions of the Law of the Sea Convention would depend upon a variety of factors, such as: whether the rule/standard has been formally adopted; whether it is in force; the number and type of States adopting the standard; the extent to which the group represents States whose vital interests are affected by the standard; and State practice. In this case, we do not need to reach the issue whether one or more of the measures reflected in Annex VI constitutes a generally accepted international rule of standard, as our proposed implementing legislation does not rely on the coastal State authorities set forth in the LOS Convention that depend upon the existence of such a rule/standard.

Question. MARPOL does not apply to any warship, naval auxiliary or other ship owned or operated by a state and used on government service. But the Convention does require that such ships act "in a manner consistent, so far as is reasonable and practicable, with the present Convention." How will Annex VI be applied to U.S. sovereign vessels? How does that compare to the application of other MARPOL annexes to sovereign vessels?

Answer. The draft legislation submitted by the administration provides authority to the EPA. Administrator to apply some or all Annex VI standards to non-combat public vessels of the United States. Such application requires the concurrence of the

Secretary of the affected Department or Departments. U.S. treatment of U.S. public vessels under the Act to Prevent Pollution from Ships (APPS) for Annexes I and II of MARPOL exempts all U.S. public vessels. MARPOL Annex III is implemented through statutes and regulations pertaining to the transportation of hazardous materials, which require the exclusion of U.S. public vessels. With respect to Annex V, APPS requires compliance by all U.S. public vessels, with certain exceptions during time of war and from Regulation 5 of Annex V under specified conditions.

As noted in the transmittal package, Article 3 of MARPOL exempts warships, naval auxiliary and other ships owned or operated by a State and used in governmental non-commercial service, from the application of the provisions of the Convention. Such vessels are therefore excluded from the application of Amex VI. At the same time, each Party is required to take appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, to ensure that such ships act in a manner consistent, so far as is reasonable and practicable, with Annex VI. The United States already meets this requirement with respect to its sovereign immune vessels; the proposed legislation's exclusions will help ensure the maximum degree of flexibility in avoiding circumstances that could impair the operations or operational capabilities of Navy ships. Most U.S. Navy fossil fuel-powered ships now use gas turbines, which are not regulated by Annex VI, for main propulsion. U.S. Navy ships that use diesel engines for main propulsion use low (less than 1%) sulfur distillate fuel that is much cleaner than the heavy fuel oils used by many commercial marine diesel engines. Procurement programs for future diesel-powered ships specify that diesel engines for main propulsion meet emissions standards in Annex VI. In addition, new classes of surface ships are no longer constructed to use CFCs in shipboard air conditioning and refrigeration equipment, or halons in shipboard fire-fighting equipment.

Question. The Secretary's letter of transmittal states that the United States may seek the establishment of sulphur oxides emission control areas off the North American coasts. What would be the process, and timetable, of reaching such a decision within the U.S. government? Has that process commenced?

Answer. EPA, working with interested states, is conducting studies to investigate whether some portion of the waters adjacent to the North American coast would warrant designation as a SO_X Emission Control Area (SECA) under Annex VI. Given the time necessary to conduct these studies, we do not foresee a decision by the administration on this question until early 2007 or later. We further anticipate that any decision in this regard would involve consultations with Canada and Mexico. Any decision to pursue designation of a SECA would also be subject to subsequent review and approval at the IMO by other Parties to Annex VI.

Question. Amendments to MARPOL Annexes proceed through a simplified amendment procedure. U.S. acceptance of amendments to Annex VI would not, therefore, involve Senate consent. When Annex III was before this committee for consideration, then-Chairman Pell sought assurances that none of the amendments contemplated by this procedure would be of "such a nature as would require advice and consent of the Senate." The Executive Branch witness, Admiral Kime (Commandant of the Coast Guard), assured Senator Pell that the committee would "be apprised of all pending amendments, to ensure that they are of a technical nature." (Hearing on Maritime Treaties before Senate Committee on Foreign Relations, Apr. 16, 1991, S. Hrg. 102–106, at 16).

a. How many amendments to MARPOL Annexes have been accepted since April 1991?

b. Has this committee been consulted about those amendments?

c. What is the procedure in the Executive Branch for ensuring consultation with the Senate on such amendments?

d. Will the Executive Branch commit to consultation on amendments in the future?

Answer. a. Twelve sets of amendments to MARPOL Annexes have entered into force for the United States through the simplified amendment procedure since 1991.

b. We did not consult with the Senate Foreign Relations Committee with respect to the above-listed amendments. However, other Senate committees and subcommittees that have cognizance over the technical subject matter of these amendments were frequently consulted by stakeholder agencies. In addition, staff members of such Senate committees and subcommittees were specifically invited to participate on some IMO Delegations and were regularly briefed and consulted on potential amendments as they arose.

c. Although there is no formal Executive Branch procedure for ensuring such consultations, the Department of State, in consultation with other stakeholder agencies, reviews all proposed amendments to MARPOL Annexes to determine whether consultation is required. On an informal basis, as mentioned above, Senate committee and/or subcommittee staffs are regularly briefed and consulted on potential amendments.

d. We favor and will endeavor to facilitate regular consultations between the State Department and other agencies involved in the negotiation of amendments to IMO treaties, and interested congressional committees, including the Senate Foreign Relations Committee and its staff. In particular, we recognize the importance of consulting with this committee, should an amendment be potentially subject to the advice and consent of the Senate. As an aid to such consultation, it may interest you to know that draft amendments to IMO instruments can be accessed on an IMO password-protected website: (www.imodocs.imo.org). We can help you to obtain access to this website, should this be of interest.

RESPONSES TO ADDITIONAL QUESTIONS RELATING TO THE CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE (TREATY DOC. 107–21)

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO MR. WARREN M. STERN BY SENATOR RICHARD G. LUGAR

Question. Article II(2) of the Convention on Supplementary Compensation for Nuclear Damage (the "CSC") limits coverage of the Convention to "nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable" under the Vienna Convention on Civil Liability for Nuclear Damage, the Paris Convention on Third Party Liability in the Field of Nuclear Energy, or national law complying with the Annex to the Convention. The term "peaceful purposes" is not defined in the Convention, but the Secretary of State's Letter of Submittal for the Convention states:

> Each Party will decide which of its installations are used for peaceful purposes under the CSC. In the United States, installations used for peaceful purposes would not include nuclear submarines and other installations used for military operations, i.e., all operations of the Department of Defense. Some of the installations operated by the Department of Energy may also be excluded from coverage of the CSC.

a. Is it the view of the administration that all nuclear installations operated by the U.S. Department of Defense are used for military operations and would therefore be excluded from coverage under this provision?

b. Please provide a description of the types of nuclear installations operated by the Department of Energy, and whether they would be covered by or excluded from the Convention under this provision.

c. What actions are available to a party if it were to disagree with the determination of a second party as to whether a particular nuclear installation in that second party's territory was operated for peaceful purposes?

Answer. a. It is our view that all nuclear installations operated by the U.S. Department of Defense would be excluded from coverage under this provision.

b. Department of Energy (DOE) has a number of nuclear facilities that come within the definition of "nuclear installation" set forth in paragraph 2.3 of the Annex. These facilities are either reactors or facilities for processing or storing spent fuel, high level radioactive waste, and certain other waste that poses a significant risk. Based on Article II of the CSC and the limitation to civil facilities in the definition of nuclear installation set forth in 2.3, DOE does not view the CSC as covering its facilities that prepare nuclear material or equipment to utilize nuclear material for use by the Department of Defense, or that receive such material or equipment from the Department of Defense, unless and until such material and equipment are transferred permanently to and managed within exclusively civilian programs. Although this standard does not appear in the CSC, it is the standard that the United States already applies in the context of the Joint Convention on The Safety of Spent Fuel Management and on The Safety of Radioactive Waste Management done September 5, 1997.

c. Under Article VIII, each Contracting State provides its own list of nuclear installations, although other Contracting States may raise objections to that State concerning its list through the Depositary (that is, the IAEA). Article VIII provides that any unresolved questions be dealt with in accordance with the dispute settle-

ment procedure of Article XVI. Article XVI provides that, in the event of a dispute concerning the interpretation or application of the CSC, the parties to the dispute should consult with a view toward settlement of the dispute by negotiation or other peaceful means acceptable to them. If such a dispute cannot be resolved within 6 months from the date of the request for consultation, it can be submitted to arbitration or referred to the International Court of Justice (ICJ) at the request of any of the parties to the dispute. However, Article XVI also permits any State to declare, at the time of ratifying, approving, accepting or acceding to the CSC, that it does not consider itself bound by either or both of the dispute settlement provisions. The administration has recommended that the United States declare that it does not consider itself bound by the dispute settlement provisions relating to arbitration or the ICJ.

Question. What countries does the administration expect to build new nuclear facilities or to require U.S. technology to maintain existing facilities over the next 20 to 25 years? Are these countries expected to become parties to the CSC?

Answer. The administration expects a global expansion in the use of nuclear energy in the next 20 to 25 years and that U.S. technology can and will play an important role in that expansion if U.S. firms are given a fair chance to compete. We believe the most likely countries to use U.S. technology to maintain existing facilities or build new ones are Argentina, Canada, China, India, Japan, Romania, South Africa, South Korea, and Ukraine. Argentina and Romania already have ratified the CSC. Several other countries listed have expressed significant interest in joining the CSC, but have indicated they are waiting to see whether the United States (as the principal proponent of the Convention at the IAEA) becomes a party.

Question. a. Would this Convention apply in the event of nuclear damage caused by an act of sabotage or other terrorist attack at a nuclear facility covered by the Convention?

b. Would the Convention affect who would be held legally liable for the damage caused by such an attack at a facility in the United States?

c. How would it affect the compensation of victims of such an attack?

Answer. a. Yes, this Convention would apply in the event of nuclear damage caused by an act of sabotage or other terrorist attack at a nuclear facility covered by the Convention.

b. No, the Convention has been crafted so that it would not affect the operation of our domestic nuclear liability regime, including the determination of who has civil legal liability for the damage caused by an act of sabotage or a terrorist attack on a facility in the United States.

c. The Convention would not deny or reduce compensation to victims of such an attack within the United States. The Convention would actually make available additional funds to compensate victims of an attack within the United States (up to approximately two-thirds of the total amount of the contributions to the supplementary fund required with respect to a particular nuclear incident).

Question. Article I of the CSC contains a definition of the term "nuclear reactor," but no definition of the term "nuclear installation," which is used throughout the CSC. How does the administration interpret this term? Note that a definition of "nuclear installation" is provided in Article 1 of the Annex to the CSC, for purposes of the Annex. Does the term have the same meaning in the main body of the Convention?

Answer. The CSC is an umbrella convention that, except for the definitions and requirements explicitly specified in its main body, fits over a country's national law, which must be based on the Vienna Convention on Civil Liability for Nuclear Damage (the Vienna Convention), the Paris Convention on Third Party Liability in the Field of Nuclear Energy (the Paris Convention), or the Annex to the CSC. Thus, the relevant definition of "nuclear installation" for a particular country would depend on whether it adhered to the Vienna Convention or the Paris Convention or it based its national law on the provisions of the Annex. The definition of "nuclear installation" would be essentially the same in all of these cases. However, the Annex also permits the United States to use an alternative definition of "nuclear installation." This alternative definition is explicitly restricted to civil facilities that are reactors or facilities for processing or storing spent fuel, or certain products or waste that pose a significant risk (for example high-level radioactive waste).

Question. Article III(1)(a)(i) of the CSC requires each installation state to ensure the availability of 300 million SDRs, or a greater amount that it may specify to the depositary, as a first tier of compensation for victims. Alternatively, Article III(1)(a)(ii) provides temporary authority for each party to establish a transitional first tier amount of at least 150 million SDRs for the first ten years the Convention is open for signature (expiring in 2007). What amount would the administration ensure is available as a first tier of compensation to victims of nuclear incidents covered by the CSC when the United States is the installation state?

Answer. The amount that the administration would ensure is available as a first tier of compensation to victims of nuclear incidents covered by the CSC when the United States is an installation state is $300 million SDRs.

Question. The administration has indicated that it plans to meet U.S. obligations for contributions to the international fund created under Article III(1)(b) of the CSC by instituting retroactive pooling of funds from U.S. nuclear suppliers.

a. How long does the administration anticipate that it would take the U.S. Government to collect such funds from U.S. nuclear suppliers, assuming the maximum U.S. contribution of approximately $150 million is needed?

b. How would the U.S. Government meet this obligation if the funds were needed before the U.S. Government was able to collect the full amount from the nuclear suppliers?

c. What would happen if a U.S. nuclear supplier were unwilling or unable to provide the funds?

Answer. a. The administration-proposed legislation implementing the CSC requires that nuclear suppliers make any required deferred payments no later than 60 days after a notification from the Secretary of Energy, but would permit nuclear suppliers to prorate a required deferred payment in five equal annual payments, plus interest.

b. Under the administration-proposed legislation, deferred payments by nuclear suppliers rather than public funds would be the ultimate source of funds by which the United States would meet its obligation to contribute to the supplementary fund in the event of a covered nuclear incident necessitating such contributions. We recognize, however, the need for a mechanism permitting the U.S. Government, to meet its obligation to pay into the supplementary fund in a timely fashion, if necessary before the full amount due from suppliers is collected. The administration will work with the Congress when it considers the implementing legislation to devise an acceptable mechanism.

c. The administration's proposed legislation would permit the Secretary of Energy to take appropriate action to recover the amount of payment due from a supplier, any applicable interest on the payment, and a penalty up to twice the amount of the deferred payment due from the supplier.

Question. Article IV of the CSC specifies the formula for contributions by CSC parties to the international fund referred to in Article III(1)(b). This formula is based in part on the installed nuclear capacity of each party, counting one unit of installed capacity for each MW of thermal power for "each nuclear reactor situated in the territory" of the party. Article IV does not explicitly limit this formula to nuclear reactors that would be covered by the Convention (i.e., that are used for peaceful purposes). Does the administration interpret this formula to include all nuclear reactors situated in a party's territory, or only those that would be covered by the Convention? What is the basis for this interpretation?

Answer. The formula includes only reactors used for peaceful purposes, all of which would be covered by the Convention. This interpretation is based on Article II, which deals with the purpose and application of the Convention.

Question. Article V(2) of the CSC permits each party to assimilate persons having their habitual residence in its territory as its nationals for purposes of Article V(1)(b)(ii), regarding damage to a national of a party while on the high seas. What is the administration's intention in this regard?

Answer. The administration does not intend to exercise this option.

Question. Article IX of the CSC refers to the nuclear operator's right of recourse, to the extent provided in the Vienna Convention, the Paris Convention, or national legislation in accordance with the Annex to the CSC.

a. If the United States were a party to the CSC, what right of recourse would be available to a nuclear operator in the event of a nuclear incident occurring in the United States? Does this differ from current U.S. law?

b. What right of recourse is available to nuclear operators under the Paris and Vienna Conventions?

Answer. a. As noted above, the CSC has been crafted so that it would not affect the operation of our domestic nuclear liability regime. Under our domestic regime, there is no right of recourse available to a nuclear operator unless explicitly provided in a private contract between the operator and the other party to the contract.

b. There is no right of recourse except to the extent explicitly provided for in national law or in a private contract.

Question. What is the administration's position with regard to Article IX(2), which permits each party to provide, through legislation, for the recovery from the operator of public funds made available under the CSC if damage results from fault on the part of the operator?

Answer. Consistent with our domestic nuclear liability regime, the United States would not exercise this option.

Question. Article XXV provides simplified amendment procedures that would apply with regard to amending the amount of funds made available under Article III(1)(a) or (b) or amending the formula under Article IV(3). What procedures would apply to the adoption and entry into force of other amendments to the Convention?

Answer. Article XXIV provides for an international conference for the purpose of revising or amending the Convention as a whole. In accordance with generally accepted rules of international law (reflected in the Vienna Convention of the Law of Treaties), the adoption of amendments at such a conference takes place by the vote of two-thirds of the parties present and voting. A party to the Convention at the time the amendments are adopted would only become bound by those amendments (and the amended Convention would only enter into force for such a party) upon its consent to be bound by the amendments.

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